



Public Defense Backup Center

REPORT

Volume XLI Number 2

April - July 2026

Defender News

VDP Issues Annual Report 2025, Continues Assistance for Veterans

A report summarizing how NYSDA's Veterans Defense Program (VDP) pursued its mission in 2025 is [available](#) on the NYSDA website. The VDP's mission is to provide "training, support, and legal assistance to promote trauma-informed, client-centered representation of veterans and service members involved in New York State's criminal and family courts."

Expansion of the VDP team allowed it to meet a "significant increase in both case volume and mitigation requests throughout 2025" driven by an intensive outreach campaign the year before. Case studies included in the 2025 Annual Report illustrate ways in which the VDP impacted legal outcomes and clients' lives. VDP's 2025 work also included systemic advocacy on behalf of veterans in the criminal legal system through a grant from the New York Health Foundation (NYHF) to assist in Veteran Treatment Court matters across the state.

Among other work, VDP works closely with new and existing Veterans Treatment Courts (VTC) and provides assistance to public defenders and their clients who may benefit from involvement in a VTC. This work was highlighted in a News Picks item on [June 23rd](#) about a new VTC in Warren County.

Defenders can request VDP assistance and consultation regarding the military aspects of the client's life that may affect their case. VDP can, among other things, prepare mitigation reports based on the client's military experience and its effect on the client's life, and, for active-duty clients, advocate "for

retention, or favorable discharge in the event of a separation board."

This VDP Annual Report comes at a point in 2026 when the human costs of military service loom large in news and thoughts. A March 9th [news release](#) announcing an NYHF report on the New York veteran suicide rate included the observation by NYHF President and CEO that "[c]ombat operations in Iran and Venezuela place our troops in danger. But the challenges facing service members do not end when their deployments do; the crisis of veteran suicide is ongoing" This crisis can overlap with veteran involvement in the legal system, as discussed in the [January-March 2026 issue](#) of the *REPORT*.

U.S. Supreme Court End of Term Cases: Mostly Bad News, a Few Wins

This issue's summaries of cases from the U.S. Supreme Court beginning on page [13](#) include a number of decisions that curtail or overturn a variety of rights and remedies. Those are touched on below, after discussion of the few bright spots in the end of term cases. Some cases have made media headlines; the *REPORT* seeks to document all Supreme Court cases relevant to defenders and provide links so lawyers can easily read them for themselves.

Obtaining Information Via Geofence Warrants Said to Constitute a Search

As noted in the [August 17 News Picks](#) from NYSDA Staff, Justice Kagan, writing for the Court in *Chatrpie v United States* (summary p. [18](#)), found that police "conducted a Fourth Amendment 'search' when they acquired," by means of a "geo-

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fence warrant,” cellphone data leading to an arrest. A geofence warrant compels a company that collects location data to disclose data about the cell phones located in a specific area near a specified time. The majority found that people have a reasonable expectation of privacy in records about their cell phone location, and police intrude on that constitutionally protected interest when they demand this information. The matter was remanded for consideration of whether the search in question was reasonable. Defenders with cases involving digital information, in search contexts or otherwise, are encouraged to contact NYSDA’s Discovery and Forensic Support Unit for consultation at forensics@nysda.org.

Birthright Citizenship Upheld

On the last day of June, the birthright citizenship case, *Trump v. Barbara* (summary p. 19), was decided. Chief Justice Roberts authored the opinion for the Court. It says that “[t]o understand the Citizenship Clause of the Fourteenth Amendment, it is first necessary to understand the context in which it arose—and the opinion of this Court, *Dred Scott v. Sandford*, 19 How. 393 (1857), that it rejected.” The history lesson begins with the common law principles that the sovereign—the King—owes a duty of “protection” to those “born within the dominions” and that those so born owe in return a duty of “allegiance.” Often painful historical situations are discussed; as just one example, Roma children born in the realm were natural-born British subjects despite law that directed Roma people to avoid the realm under pain of punishment that could include death. After independence from Britain was secured, under the “right of the soil,” everyone born within a state’s jurisdiction was a citizen, which was particularly important in a nation of immigrants. But the states that made slavery legal and distinguished among people by race rejected the common law; the odious *Dred Scott* decision “imposed the Southern States’ beliefs onto the Nation.” That was overturned by the Civil Rights Act of 1866 and then the Fourteenth Amendment. While certain limits exist or existed, those limits do not “apply to children born of parents unlawfully or temporarily present in the United States” The decision concludes: “Citizenship, then and now, was the right to have rights— to freely participate in our political community. The Framers of the Fourteenth Amendment extended that promise to ‘every free-born person in this land.’ We keep that promise today.”

Justice Thomas’ long dissent argued that the Citizenship Clause was intended to (only) overturn *Dred Scott*, and claimed that the Clause has “been repurposed for political projects that the Reconstruction Congress did not support.” Justice Alito also dissented, saying, “the Fourteenth Amendment confers citizenship on only those children who, at birth, owe allegiance

solely to this country,” and complained that this should not apply to children who are “made nationals of their parents’ native country” at birth. Justice Jackson concurred, writing separately to respond to Justice Thomas’ dissent.

Justice Kavanaugh’s concurrence agrees with some of Justice Thomas’s opinion, but does ponder these questions—“Is a child born here to parents who have long chosen to make this Nation their permanent home not a citizen under the Fourteenth Amendment solely because his parents’ presence violates statutory law? If those parents are not domiciled here, then where are they domiciled?” Ultimately, Justice Kavanaugh concurred in the result but not on constitutional grounds, finding the order contravened a federal statute, 8 USC 1401(a).

The multiple opinions in *Barbara*, and in other immigration cases discussed below and in the August 17 News Picks, indicate that the rights of people born outside the U.S., and even those born here into immigrant families, are all-too-tenuous today.

Batson Error not Waived

The Court addressed preservation of a claim that peremptory challenges had been used in a racially discriminatory way in *Pitchford v. Cain* (summary p. 14). The trial court, after asking the prosecution for reasons why Black jurors had been peremptorily challenged, declared each reason to be race neutral, but did not afford defense counsel an opportunity to rebut these reasons as pretextual. At the close of jury selection, defense efforts to again raise the *Batson* issue were cut off. Eleven white and one Black juror convicted the Black defendant

Public Defense Backup Center REPORT

A PUBLICATION OF THE DEFENDER INSTITUTE

Volume XLI Number 2

April - July 2026

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THE REPORT IS PRINTED ON RECYCLED PAPER

of capital murder, sentencing him to death. He fought the conviction for over 20 years. A federal district court found that he had objected to the explanations given for the peremptories, but the Fifth Circuit reversed. The Supreme Court, in an opinion by Justice Kavanaugh, said that it was unreasonable to find the defendant waived the *Batson* issue. A dissent argued that the defendant, who had raised a statistical *Batson* argument at trial, had only belatedly “introduced a new comparative juror argument” that Black potential jurors had been dismissed based on circumstances that did not lead to dismissal of white ones.

Post-Trial DNA Tests Improperly Considered in Harmless Error Analysis

In another habeas case, *Whitton v Dixon* (summary p. 15), the Court in a per curiam decision said that the Fifth Circuit erred in finding that, while there had been trial testimony that the prosecution knew to be false, this was harmless error because of overwhelming evidence against the defendant. But that included evidence the jury never saw: blood stains on the defendant’s boots which were found to match the victim’s blood a decade after trial. This, the Court said, shed no light on the effect of the false testimony on the jury’s verdict. The matter was remanded for further proceedings in the Court of Appeals. Justice Thomas, joined in part by Justice Alito, dissented.

Laws Restricting Public Carry of Guns and Gun Possession by Drug Users Overturned

Charges of possessing a gun while being an “unlawful user” of a controlled substance—marijuana—under 18 USC 922(g)(3) violated the Second Amendment under *Bruen* (597 US 1), the Court held in *United States v Hemani* (summary p. 15). The Court rejected the government’s attempt to analogize the current law to “historical habitual drunkard laws” and the Controlled Substances Act. Changes in criminal law regarding marijuana have resulted in millions of people using the drug, making it difficult to say they are all “categorically and unusually dangerous.” Justice Thomas’s concurrence said that the challenged statute also “appears to exceed Congress’s enumerated power to regulate interstate commerce.” Justice Jackson concurred, noting a continuing belief that *Bruen* was wrong and is unworkable.

In the other gun case, *Wolford v Lopez* (summary on p. 17), the majority found that Hawaii’s latest firearm law, which prohibited anyone carrying a firearm from entering without a property owner’s express authorization, is unconstitutional. The Court observed that permit holders may be burdened by having to obtain permission to carry on property “before stepping foot on it.” Hawaii’s history of disfavoring the carrying of guns does not matter; “the Second Amendment has the same meaning in

all parts of the United States.” Justice Barrett, concurring, noted that all property owners in Hawaii could bar guns. Dissenting Justice Kagan found the challenged law a “modern-day analogue of colonial and founding era laws that similarly prohibited carrying firearms onto private property without the owner’s affirmative consent.” Dissenting Justice Jackson said the Hawaii law “fairly applies a first principle of property law—the right to exclude—and does no harm to the Second Amendment.” The majority, she added, “has now manipulated *Bruen* into a free-for-all that lets the Judiciary thwart the will of legislatures by privileging access to firearms above all else.”

Waiver of Appeal of Federal Sentence Unenforceable if Miscarriage of Justice Results: Mandated Medication Challenged

A defendant in federal court who accepts a favorable plea offer that includes a waiver of appeal may still seek appellate review if enforcing the waiver would result in a miscarriage of justice, the Court held in *Hunter v United States* (summary p. 16). Hunter sought to challenge the requirement that he “take all mental-health medications that are prescribed by [his] treating physician.” The Circuit Court dismissed the appeal based on the waiver. The Court found that “the standard for enforcing appeal waivers implicates the interests not only of the agreement’s parties, but also of the judiciary,” and concluded that setting a high bar, but not an unsurmountable one, would “offer a safety valve for extreme cases—a way out of a waiver when the justice system’s basic integrity is at stake.”

Justice Gorsuch’s long concurrence decried “coercive prosecutorial tactics designed to induce defendants to take plea deals” and said the majority decision “begins to correct course” after the Court had too long condoned such tactics or let them pass in silence.” This decision “is not a solution to all of plea bargaining’s excesses, and perhaps not even those associated with appeal waivers,” he wrote. “But it is a start.” Justice Kavanaugh and Justice Barrett concurred, and Justice Thomas dissented, challenging the Court’s “supervisory power” to override the waiver. While federal sentencing law does not control in state cases, state defenders may find uses for the reasoning of the *Hunter* majority.

Relief Overturned in Two Criminal Cases

In *District of Columbia v R.W.* (summary p. 14), the Supreme Court in a per curiam decision disagreed with a D.C. District Court decision finding police had violated the Fourth Amendment. Where officers responded to “a late-night dispatch call about a suspicious vehicle,” saw two passengers of a car in the parking lot flee immediately upon the police arrival, and saw the driver of that car then begin to back out of

the parking space with the door still open, the Supreme Court found that the combined actions strongly suggested unlawful conduct supporting the stop of the car. Justice Jackson dissented, critiquing the fact-specific opinion and concluding: “I am not sure why our Court sees fit to intervene in this case, let alone to do so summarily.”

Citing the Antiterrorism and Effective Death Penalty Act of 1996 [AEDPA], the Court found the Second Circuit to have exceeded its authority in a habeas decision, finding error in *McCarthy v Hernandez* (summary p. 16) regarding the failure of the trial court to instruct the jury to consider whether the defendant’s post-*Miranda* confessions were sufficiently attenuated from a pre-*Miranda* statement.

Court Limited or Outright Denied Remedies for Incarcerated People and Others

Decisions that impact incarcerated people include *Parks v Thornell* (summary p. 13), where the Court denied an incarcerated petitioner’s motion for leave to proceed in forma pauperis, dismissed the petition for a writ of certiorari, and, noting that the petitioner had “repeatedly abused this Court’s process,” directed the Clerk “not to accept any further petition in non-criminal matters from petitioner unless the docketing fee ... is paid and the petition is submitted in compliance with” the rule describing (expensive) printed-document requirements. Justice Jackson’s dissent, which sets out the increasing use by the Court of restrictions on filing by people who are incarcerated, criticized the actions that block incarcerated individuals without funds “from ever more accessing our courthouse, just to avoid a minor administrative burden.”

Another matter curtailing the ability of certain incarcerated people to secure relief is *Fernandez v United States* (summary p. 14), which held that people in federal prison who want to challenge the validity of their conviction cannot do so through 18 USC 3582, governing courts’ ability to shorten sentences for “extraordinary and compelling reasons,” but only through the postconviction statute, 28 USC 2255. The dissent called the decision an “atextual and unsupported limitation on a district court’s sentencing discretion.” A majority of the Court also limited compassionate release in *Rutherford v United States* (summary p. 15); the decision said people serving federal sentences that were imposed before Congress passed the First Step Act do not qualify for reduced penalties, as the Act was not made retroactive.

The ability of people to obtain redress under the Religious Land Use and Institutionalized Persons Act (RLUIPA) of 2000 for violations of their rights while incarcerated was also limited by the Court, in *Landor v Louisiana Dept of Corrections and Public Safety* (summary p. 17). Landor, a Rastafarian, sued the

Louisiana Department of Corrections and individual correction officers who shaved his head despite a religious requirement that his hair not be cut. The Supreme Court found that the RLUIPA falls under the Spending Clause of the Constitution and that, as Congress’s power to spend money under that Clause “does not include the power to regulate,” the statute “can bind only those who voluntarily and knowingly undertake obligations by agreement with the federal government,” which the individual officers had not.

Devastating Immigration Policies Upheld

As *Scotusblog.com* observed in a [post](#) on June 23rd, “[t]he Supreme Court ... in *Blanche v Lau* [summary p. 17], cleared the way for immigration officers to more freely deny lawful permanent residents [LPRs] – also known as green card holders – admission into the United States.” Specifically, the Court addressed the situation of a green card holder who has been outside the U.S. and arrives back at the U.S. border, where immigration authorities seek to act on the fact that the person faced charges of having committed certain crimes. The high court rejected a Second Circuit holding that the government had, at that time of reentry, the burden of proving that person’s commission of the crime by clear and convincing evidence before it could find the person to be “an applicant for admission” rather than as a person already “admitted” to the United States. Justice Jackson’s dissent succinctly described the situation: “[a]n LPR who is deemed to be ‘seeking an admission’ rather than already admitted can be turned away, detained, or conditionally let back into the country on parole.” She added, “[i]n the worst-case scenario under today’s holding, the Government could merely assume at the border that any one of the six exceptions applies to an LPR (without any evidence) and prove the applicability of the statutory downgrade at a later removal hearing, using evidence accrued in the meantime.”

Due to a decision two days after *Lau—Mullin v Al Otro Lado* (summary p. 18)—the position of noncitizens seeking asylum in the U.S. also worsened. A “metering” policy of disallowing more than a certain number of noncitizens to cross the border to seek asylum, stopping additional would-be asylum applicants at the border, had been challenged in federal court; the Supreme Court found that only asylum seekers who cross the border have “arrived” here, entitling them to apply for asylum and be “inspected” as asylum law requires. Justice Thomas concurred, adding that the relief granted below “may well have unconstitutionally infringed on the President’s inherent authority to exclude [noncitizens] from the country.” Dissenting justices asserted that the ruling allows the Executive Branch to circumvent mandatory asylum procedures.

And in *Mullin v Doe* (summary p. 18), the Court considered

whether respondents, who challenge the termination of Temporary Protected Status (TPS) for [noncitizens] from Syria and Haiti, are entitled to orders postponing the terminations during litigation” and held “that they are not.”

Though these decisions may not impact every case that state defenders handle, the decisions emphasize the precarious position of all noncitizens. Defenders should ask every client where they were born and contact the appropriate Regional Immigration Assistance Center (RIAC) about all clients born outside the U.S., even if they have naturalized.

LGBTQ+ Issues Decided

Family defenders whose clients have transgender children in school may need to know about *Mirabelli et al. v Bonta* (summary p. 13). Policies that prevent schools from telling parents about their child’s gender-transition efforts at school without the child’s consent were found to burden the exercise of parents’ sincere religious beliefs regarding sex and gender and interfere with the due process rights of parents to direct the upbringing and education of their children.

In *Chiles v Salazar* (summary p. 13), the Court examined a Colorado law that prohibited counselors from engaging in “conversion therapy” with minor clients, insofar as it applied to talk therapy. The Court found the law to be a regulation of free speech protected by the First Amendment and subject to rigorous First Amendment scrutiny that the courts below had not applied. Two concurring justices noted that the law regulated speech based on a particular viewpoint and said that a viewpoint-neutral law “would raise a different and more difficult question.” Justice Jackson dissented.

In *West Virginia v B. P. J.* (summary p. 19), the Court held that schools may “determine eligibility for women’s and girls’ sports based on biological sex.” Justice Thomas concurred, stressing that “transgender status is not a suspect class requiring heightened equal-protection scrutiny,” and that “[s]ex is an immutable ‘biological’ characteristic ...; it is binary” Justice Gorsuch concurred separately, and three justices concurred in part and dissented in part.

Suppression Wins in the Court of Appeals

New York’s high court ruled for the defense in several suppression cases in the last few months.

Protection from Warrantless Police Entry into Home Expanded

In February, the Court of Appeals expanded the constitutional prohibition commonly known as a *Payton* violation. *People v Shaw*, 2026 NY Slip Op 00961 (2/19/2026). The majority op-

inion described *Payton v New York* (445 US 573 [1980]), in which “the U.S. Supreme Court held that absent exigent circumstances, the Fourth Amendment ‘prohibits the police from making a warrantless and nonconsensual entry into a suspect’s home in order to make a routine felony arrest’” Shaw, who had been arrested by a SWAT team that ordered him out of the apartment they had surrounded, successfully argued that “even though he was taken into custody outside the apartment, his arrest nonetheless violated his constitutional rights under a theory of ‘constructive entry.’” The Court said:

When officers subject someone to a display of authority that induces them to exit the home under coercion, the sanctity of the home has been invaded to the same extent as if the officers had physically entered. Such a show of force violates *Payton* and renders an arrest unlawful under both the Fourth Amendment and the New York Constitution, just as it would be if the arrest occurred within the confines of the home itself.

The matter was remitted for consideration of whether the gun found hidden in the home should be suppressed under the correct standard. The *Shaw* majority pointed out testimony “that the police chose not to obtain an arrest warrant for the defendant because they wanted to interview him before his right to counsel attached.” This mattered because of “the interplay between the state’s right to counsel rules and search and seizure provisions,” explained in *People v Harris* (77 NY2d 434 [1991]). Three judges dissented.

Barry Kamins, in an [April 6th column](#) on *Law.com*, noted that *Shaw* makes New York the third state to find constructive entry a *Payton* violation under a state constitution; the others are Oregon and Washington. A summary of *Shaw* appeared in the [Jan.-Mar. 2026 issue](#) of the *REPORT*, and the case was described in the [April 27th News Picks](#).

Fellow-Officer Rule Applicability Not Established

A “probable cause I-card” was created for the defendant based on a witness’s statement and identification of the defendant’s photo, and the defendant was arrested the next day, but the prosecution offered no evidence at a suppression hearing that the arresting officers knew of and relied on the I-card. The Court of Appeals found there was not sufficient evidence establishing probable cause for the defendant’s arrest. *People v Palacios* (summary p. 19). The “fellow officer rule” may be proven from circumstantial evidence (see e.g. *People v Ramirez-Portoreal* [88 NY2d 99 (1996)]) but “the circumstances here do not support an inference that a communication establishing probable cause occurred between the detective and the officers.”

Palacios was cited in an April trial court decision not for its suppression holding but for its discussion of I-cards. The court in *People v Garcia* (88 Misc 3d 1258[A] [Crim Ct, Bronx Co 2026]), in discussing whether the prosecution had fulfilled its discovery obligations, noted that the defense had “a plausible argument that DD5s from prior investigations could be related to the subject matter of the current case when, as here, the legality of the arrest might turn on whether the I-cards were supported by probable cause.” [Emphasis added.] Gary Muldoon’s *Criminal Law Slangue of New York* (5th ed.) notes that a “DD-5” is a “complaint follow-up report by police in NYC.”

Legality of Vehicle Stop Should Have been Addressed

A trial court erred in denying a suppression hearing without addressing the legality of the police stop of the defendant’s vehicle, the Court of Appeals held in April. The trial court had reasoned that there was nothing to suppress in a VTL 511 case, but failed to address the legality of the stop or the argument that post-stop observations could be suppressed. The prosecution did not provide any factual basis for the stop. The Court remitted for a suppression hearing. Chief Judge Wilson, in partial dissent, observed, citing to state and federal law, that “[a]bsent information that Mr. Ehinmiakhena was stopped lawfully, he cannot be prosecuted, even if all that the police obtained from the stop was his identity, used to check a government database.” Failure to hold a suppression hearing requires reversal, not remittal, and in any event, he would not have remitted ten years after the stop, but rather would have reversed and dismissed the case. *People v Ehinmiakhena* (summary p. 19).

Family Defense News

Petitioners Must Show Nexus Between Mental Health Symptoms and Parenting Deficits to Prove Neglect

In mental health-related FCA Article 10 cases, defenders must hold petitioners to their burden to prove a sufficient nexus between respondent parents’ mental health symptoms and impairment or imminent risk of impairment to the child. In the [April 27th](#) edition of News Picks, we encouraged defenders to think creatively about challenging neglect allegations where parents imperfectly engage in mental health services or reach out for support while undergoing mental health symptoms. This issue of the *REPORT* summarizes several relevant cases.

The First Department vacated a finding of neglect in *Matter of Ja.W.* (summary p. 34) where there was no evidence linking the

respondent mother’s mental health diagnoses and level of treatment engagement to potential harm to the children—the respondent seeking respite care for the children due to feeling overwhelmed did not evidence imminent risk.

In *Matter of L.K.* (summary p. 30), by contrast, the First Department found sufficient evidence that the respondent mother’s mental illness and symptoms of paranoia and delusions interfered with her judgment and parenting abilities, and that they placed her very young child, who was totally dependent on her care, at imminent risk of impairment. In *Matter of Jasic UU.* (summary p. 59), the Third Department also upheld a finding of neglect where petitioner proved the mother was unduly paranoid, that her actions were not those of a reasonably prudent parent, and that she was unable to recognize how her actions impacted the children. There was sufficient evidence of impaired parental judgment causing substantial risk of harm to the children, evidenced by the older child’s expression of an intent to self-harm.

These cases remind that, especially in the face of mental health-related stigma in the legal and family regulation systems, mental health diagnoses do not equate to neglect. Advocates must insist that neglect findings hinge on sufficient proof of impaired parental judgment and behavior that impacts the children, not on the simple fact of a respondent’s mental health diagnoses.

Expert Testimony in Medically Complex Family and Criminal Child Abuse Cases

A recent Second Department case highlights the importance of carefully prepared expert testimony to challenge medically complex allegations of child abuse and neglect. In *Matter of Zerina H.* (summary p. 42), the family court found that the petitioner sufficiently proved abuse and neglect by the mother where the two-month-old child sustained injuries purportedly consistent with “shaken baby syndrome.” The Second Department reversed and dismissed the petition, finding the family court’s decision unsupported by the record because the mother’s expert reasonably explained the child’s injuries and presented a more plausible opinion than the agency’s expert, rebutting petitioner’s prima facie case. In the [December 24th](#) edition of News Picks, NYSDA covered a New Jersey decision that went even further, excluding the prosecution’s expert testimony about shaken baby syndrome and abusive head trauma in two criminal cases under the *Frye* standard.

Defenders handling medically complex family and criminal cases should be encouraged by *Zerina H.*’s outcome, and should be sure they obtain complete discovery, address medical claims head on, and carefully prepare defense expert testimony to create a strong record for both trial and appeal.

NYSDA's Discovery and Forensic Support Unit welcomes inquiries from defenders seeking support in handling complex medical evidence and locating experts at forensics@nysda.org. A panel of NYSDA attorneys presenting on effectively and ethically working with experts was included on the schedule for NYSDA's [2026 Annual Conference](#). Those unable to attend may contact the Unit and access our [online trainings and CLEs](#) for issues related to expert testimony.

Reaffirmation of the Right to Counsel in Family Court

This issue of the *REPORT* sees an uptick in appellate cases affirming the right to counsel in certain family court cases (see [FCA 262](#)). As noted in the [June 2, 2026](#), edition of News Picks, the Fourth Department reversed an order of joint custody in *Matter of Crespo* (summary p. 73) after determining that the mother's waiver of counsel was not knowing and voluntary because the court did not conduct a "searching inquiry" to ensure that she understood the advantages and disadvantages of her decision, thereby violating her due process rights. "It is well-established law that the right to raise one's child is fundamental, and the possibility of infringement of that right entitles a parent to the assignment of counsel in a variety of cases, including an FCA Article 6 custody case." Here are other cases that also addressed the right to counsel.

In *Matter of Carlene R. v Heather A.* (2026 NY Slip Op 04015 [6/25/2026]), the family court relieved a mother's attorney mid-trial at the request of the mother and her attorney and then relieved the mother's second attorney at the attorney's request and over the mother's objection. The record reflected that the mother was then forced to represent herself for the remainder of the trial "'because [she] may have a misunderstanding of how an attorney-client relationship works' and because 'being a rural county, with a short assigned counsel list . . . [we have] come to the end of the free attorneys.'" The Third Department found that the mother never waived her right to attorney, as evidenced by her repeated request to be assigned new counsel. This case raises questions about the responsibility of the family court and the county to provide counsel under County Law 722 and FCA 262 and the dearth of attorneys on assigned counsel panels in certain locations, as well as the propriety of an attorney withdrawing from a case over a client's objection. An attorney should not seek to withdraw from a case if it may cause a material adverse effect on the interests of the client, or if it would result in significant harm to the forward progress of the client's matter. See [New York Rules of Professional Conduct](#), Rule 1.16(c)(1); [ABA Formal Opinion 516](#). It is best practice before asking to be relieved for an attorney to have an in-person meeting with the client to resolve the differences.

Mere personality conflicts or disagreements over litigation strategy should not automatically trigger a motion to withdraw, especially when there may not be another attorney available to take over.

In *Matter of Baldwin v Peterkin* (248 AD3d 1236 [4/29/2026]), the father, who was facing the possibility of incarceration for non-payment of child support, was forced, despite being financially eligible for assigned counsel, to represent himself at a confirmation hearing and ultimately went to jail for 60 days after being found in willful violation of the support order. The Second Department found reversible error and vacated the willful finding. The appellate court opined that, "although the Support Magistrate had previously cautioned the father against self-representation ..., the Support Magistrate at no point conducted a sufficiently searching inquiry to ensure that the father was knowingly, voluntarily, and intelligently waiving his right to counsel. The deprivation of the father's fundamental right to counsel requires reversal, without regard to the merits of his position, especially where, as here, the record demonstrates that the father did not have a basic understanding of court proceedings." [Citations omitted.]

In *Matter of Jimmy PP. v Jennifer QQ.* (2026 NY Slip Op 04241 [7/2/2026]), the Third Department agreed with the father's contention that he was denied the right to counsel when he was forced to appear pro se during the initial appearance of a custody case where a temporary order of custody was granted.

The *REPORT* has previously discussed the right to effective assistance of counsel. See, for example, the [Sept.-Dec. 2025 issue](#).

New OCFS Guidance is Welcome News for Parents with Children in Foster Care

Family defenders representing parents in abuse and neglect proceedings understand the often-insurmountable roadblocks parents face when seeking to reunify with their children who have been removed and placed in the foster care system. Effective April 2026, New York State removed a major financial obstacle to reunification for many impacted families.

In [November 2022](#), we reported that the Health and Human Services (HHS) Administration for Children and Families issued [guidance](#) that stated in part, "[i]t is almost never the case that securing an assignment of the rights to child support is in the best interests of a child during the time the child is in title IV-E foster care It's likely that reducing the income of the child's parent(s) could impede their ability to engage in reunification efforts, potentially extending the time the child spends in foster care."

As reported in the [June 2, 2026](#), edition of News Picks, the Office of Children and Family Services finally responded to this

federal directive on April 1, 2026, issuing a new policy urging local departments of social services to cease most referrals of parents” for the collection of child support. “Pursuant to [18 NYCRR 422.2], at the time of foster care application, or as soon as practicable thereafter, the appropriate social services official must determine the appropriateness of making a referral to the child support enforcement unit. The assessment of appropriateness for such referral must be made separately and distinguish between the former custodial parent and the non-custodial parent.” Please note that the guidance and regulations are nuanced and do not prohibit the collection of child support in all cases. Defenders are therefore encouraged to review all relevant guidance and regulations to provide their clients with the most accurate information and reach out to NYSDA’s Backup Center attorneys at info@nysda.org with any questions.

Systemic Change Shows Signs of Life in the “Child Welfare System”

The Family Justice Law Center, along with co-counsel, recently announced the filing of “[a] class-action lawsuit against the City of New York alleging that the Administration for Children’s Services (ACS) unconstitutionally abuses its ‘emergency removal’ power to take children from their parents without a court order.” The 90-page federal complaint alleges in part that ACS routinely violates the federal constitution, as well as Family Court Act 1024, through an unwritten policy of unilaterally removing children from their homes “in circumstances that do not present a risk to the child’s life or health so grave and immediate that there is insufficient time to seek a court order.” The full complaint in *Matter of Archer v City of New York* can be found here. Coverage of the lawsuit can be found at The Imprint, News12, amNY, NY Daily News, The New Yorker, and the New York Law Journal.

In the two June editions of News Picks, we covered several policy-related family court items. In the June 23, 2026, issue we highlighted another federal lawsuit, *K.W. v The City of New York*, filed by a father on his own behalf and on behalf of his then 6-day-old son who was removed from his home by ACS. The Southern District of New York dismissed all the father’s claims, but the Second Circuit reinstated the lawsuit against some of the defendants.

Earlier, in the June 2, 2026, edition, we covered the unanimous decision by the NY Court of Appeals striking down the controversial “Host Family Homes” regulations promulgated by OCFS. “Many, including NYSDA, have argued that the Host Family Homes program is nothing more than a shadow or backdoor foster care system designed to take children away from their parents without any court protections,

and in *Matter of Lawyers v New York State Office of Children and Family Services*, the Court of Appeals agreed.” Also in the June 2nd edition, we flagged that the Anti-Harassment in Reporting Act went into effect on June 17, 2026. “The Act prohibits anonymous reporting to the Statewide Central Register of Child Abuse and Maltreatment. Starting in mid-June, callers must provide their name and contact information for their report to be transmitted to the local department of social services, unless the central register reasonably believes the caller is a child under 18.”

DVSJA News – Victory in N.H. and More

The Court of Appeals delivered a resounding victory to domestic violence survivors facing criminal penalties by holding that waiver of a Domestic Violence Survivors Justice Act (DVSJA) sentencing hearing pursuant to Penal Law 60.12 cannot be enforced as a condition of a negotiated plea. The split decision in *People v N.H.* (summary p. 20), issued on April 23rd, was discussed in the June 2nd edition of News Picks. As noted there, the plurality opinion in N.H. opened with a reiteration of *People v Brenda WW.* (44 NY3d 594 [2025]). As also noted, the case garnered attention in *New York Law Journal* articles. Since then, N.H. has been cited in First and Fourth Department decisions remitting for proceedings in accordance with the holding. *People v Jones*, 2026 NY Slip Op 03527 (4th Dept 6/5/2026) and *People v Delarosa*, 250 AD3d 625 (1st Dept 6/25/2026). It is notable that in *Jones*, the plea was not vacated as it had been in N.H., only the sentence as violative of the prohibition against waivers.

Appealability of Pre-hearing Denials of DVSJA Resentencing Applications

Three of the four Departments of the Appellate Division have now ruled that pre-hearing denials or dismissals of applications for resentencing under the DVSJA provisions of CPL 440.47 are appealable. The decisions include *People v Croney* (summary p. 26); *People v Nymeen C.* (2026 NY Slip Op 00144 [2nd Dept 1/14/2026], summarized in the previous REPORT); and *People v Welch* (summary p. 69).

Open questions remain that may ultimately reach the Court of Appeals. For example, the Third Department, in *People v Melissa OO.* (234 Ad3d 101 [11/27/2024]), had held that an application dismissed pre-hearing without prejudice for failure to meet the statutory threshold requirements to be granted a hearing was not appealable; this left open the question of whether an applicant would be without relief if a court persistently refused to hold a hearing on pleading sufficiency grounds that may be an erroneous finding as a matter of law.

Other nuanced differences between the Departments on

the issue of appealability may arise and invite further examination. These could include whether there may be a reviewable distinction between dismissal of an application with or without prejudice, and summary denial of an application without a hearing, based on a factual determination by the court of the sufficiency of a preliminary showing of eligibility on the statutory thresholds of a temporal nexus between abuse and the criminal conduct and/or whether the evidence indicates that the abuse was a significant contributing factor.

Reports, Publications, and Resources Related to Trauma and Criminal Conduct and Coercive Control

Following is a list of items that may interest defenders and others dealing with DVSJA, domestic violence, and other matters in which trauma may play a role. Some may be behind a pay wall. Contact the Backup Center DVSJA attorney, Stephanie Batcheller, for assistance with resources and other DVSJA questions.

Information on Coercive Control

A new resource is Coercive Control: Emerging Legislation, Expert Testimony, and Family Law; Elisa Reiter and Daniel Pollack, 3/12/2026, *New York Law Journal*. This article featured a proposed bill that would require courts to consider coercive control, as would be statutorily defined in a new provision in the Family Court Act, in family law proceedings. The legislative session ended without action being taken this year.

The DVSJA Statewide Task Force previously published a resource on Coercive Control (available on our DVSJA webpage). Alan Rosenthal recently compiled a collection of cases that deal with coercive control from many different areas of the law. Some of the descriptions of coercive control may help bolster the claim of abuse in DVSJA cases.

Strategy Tip for Representing Criminalized Survivors

Here is a strategic consideration in cases where clients may have a criminal history that contains convictions related to violence and trauma, presenting bars to DVSJA or other sentencing relief. Consider whether the START Act (Survivors of Trafficking Attaining Relief Together), which expanded New York's "trafficking vacatur" statute in CPL 440.10(1)(i), is an option to explore. The START Act provides complete relief for convictions derived from human trafficking. In a recent New York City case, the defense was able to purge a prior violent felony from a client's record that excluded the client from ameliorative sentencing relief under PL 60.12. Once the prior conviction was vacated pursuant to the START Act, the client was able to establish eligibility for a DVSJA guideline sentence on the newer charge. Since the defense team made strong in-

disputable arguments on both levels, the case was resolved on consent and agreement, resulting in the lack of need for any court decision. Attorneys are urged to exhaustively investigate and explore all innovative options to ensure criminalized survivors are availed of all possible relief. Hat tip to The Legal Aid Society, Exploitation Intervention Project, for this suggestion.

Other Resources

Not all the following resources are new, but they may be of interest to lawyers new to DVSJA and START Act cases.

- Sentencing Reform for Criminalized Survivors, Learning from New York's Domestic Violence Survivors Act, The Sentencing Project and Survivors Justice Project;
- Associations between childhood trauma and personality disorder traits: A cross-sectional study in the general population, Roberto Pedone, Luca Pistone, Eduardo Maria Schettino, Giovanni Florio. *Mental Health & Prevention*, Volume 38, June 2025, 200429;
- Early traumatic life events, parental attitudes, family history, and birth risk factors in patients with borderline personality disorder and healthy controls, Borwin Bandelow, Joana Krause, Dirk Wedekind, Andreas Broocks, Göran Hajak, Eckart Rüther. *Psychiatry Res.*, 2005 Apr 15;134(2):169-79. doi: 10.1016/j.psychres.2003.07.008;
- The Relationship Between Childhood Trauma and Paranoid Person Personality Disorder, Ayse Arikan, The City College of New York, 2016.

Felony Murder Needs Attention

While the *Shaw* decision above (p. 5) put New York in a leading role as to *Payton*, the State has of yet to join other leaders on another important issue—felony murder. Only two states, Kentucky and Hawaii, do not have some form of felony murder statute. The Felony Murder Reporting Project investigates and posts information about this draconian law, which, at its broadest, "allows for people to be charged with murder if a death occurs during the commission of certain felonies — regardless of whether or not that death was intended."

Felony murder laws are regarded by many as an "outdated form of punishment [that] disproportionately impacts young people and minorities, fails to enhance public safety, and does not align with reasonable principles of justice." So wrote the author of an article on *Independent.org* last November 21st; the article highlighted an episode of John Oliver's Last Week Tonight. And the Prison Policy Institute's report, Mass Incarceration: The Whole Pie 2026 includes a sidebar on how labels like "violent offense" can help incite public fear that feeds mass incarceration: "Many may be surprised that a person who was acting as a lookout during a break-in where

someone was accidentally killed can be convicted of murder.”

As discussed in the April 27th edition of News Picks, a bill is pending in the New York legislature ([S.8464-A/A.8929-A](#)) to repeal the state’s felony murder law, Penal Law 125.25(3). That bill had gained little traction during the last legislative session. New York does allow a narrow affirmative defense to felony murder, which was the basis for a defense win a year ago in *People v Rosa*, 239 AD3d 1448 (2025), summarized in the [Sept.-Dec. 2025 issue](#) of the REPORT.

Another pending bill, the Second Look Act, which NYSDA actively supports, would, among many other values, provide a way to reduce the draconian effects of New York’s felony murder law. See a January 20th [commentary](#) on *DailyGazette.com* by an incarcerated person sentenced in 2017 to 20 years to life for a felony murder conviction based on events that occurred when he was 19.

News Picks for April 27th also noted that the Pennsylvania Supreme Court recently struck down automatic sentences to life without parole for felony murder.

Prison Conditions Harm Clients, Pose Challenges to Defenders

Problems plaguing facilities run by the New York State Department of Corrections and Community Supervision (DOCCS) continued throughout the first half of 2026. Dire conditions that harm people in the facilities have been described in ongoing media coverage, and, just as the *REPORT* was going to press, in a long-awaited [examination](#) by the WilmerHale law firm focused on conditions in Marcy and Mid-State.

Horrors Continue Over a Year After Correction Officers’ Illegal Strike

News about continuing poor prison conditions failed to yield legislative or executive action in the first half of 2026. A March 10th *New York Focus* [article](#) noted a “de-emphasizing of criminal justice issues in this year’s state budget.” *The City reported* that “[a] coalition of more than 50 advocacy organizations is urging New York lawmakers to scrutinize the state’s prison system, pressing for answers about alleged brutality, deaths behind bars and violations of solitary confinement reforms” News coverage was spurred in part by the one-year anniversary of the illegal strike by state correction officers discussed in the [May-August 2025 REPORT](#). *Hell Gate* [noted](#) “[the strike’s] lingering impacts: reduced family visitation days, limited recreation time, cuts to classes, and less access to required and elective programming.”

On March 10th, *New York Focus* [noted](#) inaction on calls for investigation after “apparent suicides and allegations of de-

teriorating conditions at Bedford Hills Correctional Facility, following *New York Focus* [reporting last week](#) that three people died over four weeks at the women’s prison.” The *Times Union* published an April 4th [item](#) on “a growing chorus of concern over what advocates consider ‘dangerous and deteriorating’ conditions at Bedford Hills Correctional Facility, the state’s only maximum-security prison for women.” The WilmerHale report, focused on the prisons where Robert Brooks and Messiah Nantwi were killed, did not discuss problems specific to women’s prisons at all.

A May 18th [post](#) on DavisVanguard.org asserted that death rates in New York prisons have reached a six-year high, yet funding for oversight was threatened. *Spectrum News* Staff for Oneida County [reported](#) that Terry Demonstoy, incarcerated at Marcy, had died of injuries sustained in an assault that “investigators believe” resulted from “an altercation with another incarcerated individual”—the State Police and Attorney General’s office were [said](#) to be investigating.

Solitary confinement, a/k/a restricted housing, continues as an issue. Repeal of the HALT Act, which restricts the use of solitary, was a key demand by the correction officers during the illegal strike, and such calls continue. An April 20th *NYStateOfPolitics.com* [post](#) reported on a letter from the executive board of the New York State Correctional Officers and Police Benevolent Association (NYSCOPBA) to the Governor. It said in part that deteriorating conditions were “unmistakable warning signs of a correctional system under extreme pressure — one that is becoming increasingly unstable and dangerous for everyone who lives and works behind the walls.” And a May 13th *Malone Telegraph* [item](#) said that HALT is a “major pain point” for prison staff.

Horrifying descriptions of solitary’s effect on human beings include those in a March 25th *Buzzfeed.com* [post](#). And just days before the NYSCOPBA letter mentioned above, the *Times Union* [reported](#) on an ongoing legal battle by Anthony Marshall to be compensated for the harm he endured as a teenager subjected to years of solitary confinement in state prison. (Compensation to Marshall has been frozen by the State under the Son of Sam law.) Teens incarcerated today remain at risk of solitary confinement and other mistreatment. As noted in the [June 2nd](#) News Picks, *New York Focus* [reported](#) on April 17th about concerns expressed by the co-chairs of the Western New York Citizen Review Panel for Child Protective Services that youth in Office of Children and Family Services (OCFS) detention facilities are placed on frequent lockdown and “not being provided with required daily educational, vocational, and recreational activities.”

NYSDA supports full implementation of HALT and decries use of solitary confinement. See for example the [May-August 2025 issue](#) of the *REPORT*. The WilmerHale report does not

appear to provide any in-depth examination of HALT or use of solitary confinement, although the Alliance for Rights and Recovery commented that “[t]his report also reinforces the urgent need for DOCCS to fully implement the HALT Solitary Confinement Act and dramatically improve conditions inside New York’s prisons.”

Advising Clients About Prison

Lawyers advising clients who may be prison-bound should accurately inform those clients “about the incarceration process, including jail and prison programs,” and work with clients “to plan the future in terms of treatment while incarcerated, transitional issues, and reentry.” Client-Centered Representation Standards, NYSDA (2005), Standard 20. The current DOCCS disaster makes it hard to adequately fulfill this directive, and highlights the importance of Standard 17, which says that clients want a lawyer who “[a]ggressively pursues alternatives to incarceration, assesses immigration and collateral consequences of a client’s criminal conviction, [and] acts to prevent such consequences”

The NYS Office of Indigent Legal Services’ trial-level standards require defenders in criminal cases to “[i]nvestigate potential consequences that can arise from cases, advise each client about those consequences, and advocate for case dispositions that limit negative consequences as much as possible” (Standard 8). Lawyers must also “[p]rovide well-prepared sentencing advocacy in criminal cases, including cases in which a plea bargain exists” (Standard 9). Might this include proactive efforts to make judges aware of harm in DOCCS?

Appellate lawyers with incarcerated clients have a duty to “provide comprehensive, client-centered representation and ascertain whether the client needs assistance with matters beyond the appeal, such as ... prison conditions.” Appellate Standards and Best Practices, ILS (2023) (Standard 18). While defenders are not appointed to represent clients in civil matters stemming from harm endured while incarcerated, counsel should provide helpful information. Such information could include a State Court of Claims pilot program noted in the April 27th edition of News Picks (hyperlink updated in the [June 2nd edition](#)). The program is “aimed at connecting lawyers with unrepresented claimants pursuing civil claims against the State,” and currently deals with “claims filed on or after January 1, 2023[,] by individuals incarcerated at Coxsackie, Greene, or Washington Correctional Facilities.”

Say It Clearly – I Want a Lawyer

How often have clients lost appeals in which they claimed violation of their constitutional rights during police questioning as established by the landmark decision in *Miranda v Arizona*?

As a *USAToday.com* article noted in the [April 27th edition](#) of News Picks pointed out, courts’ narrow reading of *Miranda*’s protection too often prevent relief. If only all clients knew and heeded one law professor’s words about what to say if law enforcement wants to question a person: “there’s only two answers: ‘I want a lawyer’ or ‘I want a lawyer, damn it.’”

Of course, even a blatant assertion of the rights to counsel and to refuse to respond to questioning will bring no relief if not timely and properly raised. For instance, training materials from The Legal Aid Society note that “[a] convicted defendant can go into federal court on habeas corpus on some issues (including *Miranda* and *Wade* issues) – but only if the lawyer preserved them under the federal constitution.”

Furthermore, the many facets of a *Miranda* claim have to be properly addressed. For example, as stated in CLE materials from a NYSDA training two years ago, a *Miranda* violation requires a finding that the client was in custody at the time of interrogation—and some trial courts have found the defense has the burden of showing that. See *People v Colon* (5 Misc 3d 365 [2004]). However, contrary arguments should be made. New York authority to cite includes *People v Centano* (76 NY2d 837, 838 [1990]). And, as stated in 23 Am Jur Proof of Facts 2d 713 (on Westlaw), “[i]n some states, the prosecution is required to prove that custody and interrogation did or did not exist, just as it must prove voluntariness of and noncoercion in acquiring the statement.” [Footnote omitted.]

Even blatant violation of *Miranda* is still subject to a harmless error analysis. See, for example, *People v Johnson* (summary p. 51) and *People v Lerario* (summary p. 60).

Backup Center Adds Director of Operations

NYSDA’s Backup Center has its first Director of Operations; Kristen McCallum began work on May 18th. The growth of NYSDA’s work and capabilities created a need to ensure continued and improved internal coordination, collaboration, and communication as staff go about their work in support of NYSDA’s mission. Kristen brings to this new role both experience and creativity, having worked with individuals, institutions, and mission-driven organizations to sharpen their vision, build sustainable strategies, and design people-centered programs. Her work has spanned strategic planning, curriculum development, and public engagement; clients have included The Obama Foundation and Peoplmovr. Kristen received her BA and MA degrees in English from the University at Albany. Inspired by the nuance of lived experience in both her strategic and creative work, Kristen explores how personal stories can shape collective change. Her debut novel, *Free Girls*, was recently published by Flatiron Books.



Andy Fine (l) received NYSDA's Wilfred R. O'Connor Award in 2010, presented by NYSDA Board President Ed Nowak (r).

Death of Andy Fine: A Great Loss

Andrew C. Fine, whose long public defense career included decades at The Legal Aid Society's Criminal Appeals Bureau (CAB), died at age 75 on April 9th. This tremendous loss affects not only CAB but also public defenders and clients across the state and beyond. Andy shared his deep legal knowledge and insight with many, including lawyers attending his presentations at NYSDA training events and NYSDA's Board, on which he served during the 1990s. As former NYSDA President Edward Nowak recently said about Andy, "he was a truly brilliant appellate lawyer. However, it was Andy's willingness to share his tremendous knowledge in order to help others that set him apart. He was a truly kind and generous person."

In 2006, NYSDA's then-Managing Attorney, Charlie O'Brien, wrote to Andy thanking him after a CLE presentation. It had been, Charlie said, "extremely thought provoking as well as practical," adding, "the many relevant questions from the audience demonstrated that folks were engaged." Other admirers who heard Andy present over the years agreed. After the 2016 Annual Meeting and Conference, at which Andy did not present, one attendee wrote, "Bring Andy Fine back!!!!"

If only we could.

NYSDA honored Andy with its Wilfred R. O'Connor Award in 2010, citing both his outstanding devotion to clients and his extensive work on vital and complex legal issues.

Following Andy's death, former NYSDA Staff Attorney Al O'Connor said that Andy "was our Michael Jordan – the one lawyer we could always turn to and be certain to emerge smarter, wiser and better positioned to win." Al continued:

During my 25 years at NYSDA, Andy generously offered his time and analytical skills whenever I needed help with a Court of Appeals brief. For forty years, he did the same for hundreds of other lawyers at the Legal Aid Society and for NYSDA members throughout the state. Andy helped shape the criminal law in New York - from the heyday of state constitutional decision-making in the 1970s and 80s

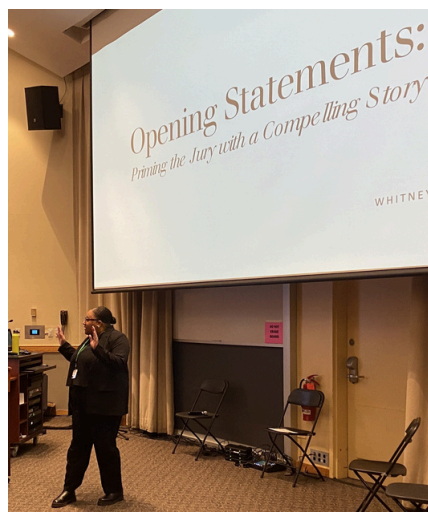
through the later decades of retrenchment, when defense wins became scarcer and Andy's supreme gifts became more indispensable than ever. In his quiet, unassuming, and endlessly generous way, Andy Fine made New York a fairer and more just place for all of our clients. I am profoundly grateful to have known him and to have learned so much from him over his long and brilliant career.

Basic Trial Skills Program 2026

This year's BTSP in Saratoga Springs debuted a revamped program with a new case! Congratulations to all involved!

Skill-building sessions included those pictured below:

First Day Communications Fun, with Danielle Skraas,
Opening Statements, with Witney Hayes, and
Our Clients, ourselves, with James Scruggs and Vienna Carrol.
(See p. 23 for group photo.)



Case Digest

The following are short summaries of recent appellate decisions relevant to the public defense community. These summaries do not necessarily reflect all the issues decided in a case. A careful reading of the full opinion is required to determine a decision's potential value to a particular case or issue. Some summaries were produced at the Backup Center, others are reprinted with permission, with source noted.

For those reading the REPORT online, the name of each case summarized is hyperlinked to the slip opinion. For those reading the REPORT in print form, the website for accessing slip opinions is provided at the beginning of each section (Court of Appeals, First Department, etc.), and the exact date of each case is provided so the case may be easily located at that site or elsewhere.

United States Supreme Court

In the online version of the *REPORT*, the name of each case summarized is hyperlinked to the opinion on the US Supreme Court's website, www.supremecourt.gov/opinions/opinions.aspx. Supreme Court decisions are also available on a variety of websites, including Cornell University Law School's Legal Information Institute's website, www.law.cornell.edu.

**Parks v Thornell, No. 25–6384, 2026 WL 490707
(2/23/2026)**

APPEALS - Right To Seek Writ Of Certiorari/ Fivolous Appeals

LASJRP¹: The Supreme Court denies petitioner's motion for leave to proceed in forma pauperis and dismisses the petition for a writ of certiorari, noting that as petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petition in on-criminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1.

Justice Jackson dissents, citing her dissent in *Howell v. Circuit Court of Indiana*, 2026 WL 136000, where she asserted that "because time moves on after a person is imprisoned and things happen, we simply do not and cannot know whether indigent prisoners who have filed multiple 'frivolous' petitions in the past might have a meritorious claim in the future. When liberty, bodily integrity, or fundamental fairness is at stake, preventing such litigants from ever again accessing our review imperils our ability to provide equal justice for all." "I believe that when balancing prisoners' access to judicial review, on the one hand, and reducing our administrative burden, on the other, we should err on the side of keeping our courthouse doors open. For a system designed to administer justice, reflexively rejecting (potentially meritorious) petitions from incarcerated litigants has a cost that is much too high when compared to the (meager) administrative efficiency gains."

Mirabelli et al. v Bonta, No. 25A810 (3/2/2026)

EDUCATION LAW - Transgender Issues/First Amendment And Due Process Rights Of Parents

LASJRP: The Ninth Circuit U.S. Court of Appeals stayed a permanent injunction entered by a District Court on behalf of parents and teachers who claim that certain California policies violate their rights under the Free Exercise Clause of the First Amendment and the Due Process Clause of the Fourteenth Amendment. The parents assert that these policies prevent schools from telling them about their children's efforts to engage in gender transitioning at school unless the children consent to parental notification. The parents also challenge California's requirement that schools use children's preferred names and pronouns regardless of their parents' wishes. The teachers object to their compelled participation in the implementation of the State's policies.

The Supreme Court agrees with the parents, concluding that the parents who seek religious exemptions are likely to succeed on the merits of their Free Exercise Clause claim. California's policies likely trigger strict scrutiny because they substantially interfere with the right of parents to guide the religious development of their children. The parents have sincere religious beliefs about sex and gender, and they feel a religious obligation to raise their children in accordance with those beliefs. California's policies violate those beliefs and impose the kind of burden on religious exercise this Court has found unacceptable.

The same is true for the subclass of parents who object to those policies on due process grounds. Parents - not the State - have primary authority with respect to the upbringing and education of children. This includes the right not to be shut out of participation in decisions regarding their children's mental health. Gender dysphoria is a condition that has an important bearing on a child's mental health. When a child exhibits symptoms of gender dysphoria at school, California's policies conceal that information from parents and facilitate a degree of gender transitioning during school hours.

Chiles v Salazar, No. 24–539 (3/31/2026)

FIRST AMENDMENT - Conversion Therapy With Minors

LASJRP: In 2019, Colorado adopted a law prohibiting licensed counselors from engaging in "conversion therapy" with minors. The ban forbids "any practice or treatment ... that attempts ... to change an individual's sexual orientation or gender identity," and any "effor[t] to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attraction or feelings toward individuals of the same sex." At the same time, the law explicitly allows counselors to engage in "practices" that provide "[a]cceptance, support, and understanding for the facilitation of an individual's ... identity exploration and development," and allows counselors to provide "[a]ssistance to a person undergoing gender transition." The State adopted the law "in response to a growing mental health crisis among Colorado teenagers and mounting evidence that conversion

¹ Summaries marked with these initials, LASJRP, are courtesy of The Legal Aid Society's Juvenile Rights Practice, from their weekly newsletter.

US Supreme Court *continued*

therapy is associated with increased depression, anxiety, suicidal thoughts, and suicide attempts.” Any Coloradan who thinks a licensed counselor is engaging in conversion therapy may file a complaint with a regulatory board. A complaint triggers a disciplinary review process that can yield a fine, probation, or the loss of a license.

Plaintiff filed suit and sought a preliminary injunction prohibiting the State from enforcing the law against her. She did not object to Colorado’s effort to ban what she herself calls “long-abandoned, aversive” physical interventions. Instead, she objected to Colorado’s law only as it applies to talk therapy that involves no physical interventions or medications, only the spoken word.

The Supreme Court, with Justice Jackson dissenting, agrees with plaintiff that because application of the law to plaintiff’s talk therapy strikes at the heart of the First Amendment’s protections for free speech, it warrants considerably more searching scrutiny than the rational-basis review the Tenth Circuit applied or the intermediate-scrutiny review some other lower courts have employed in cases like hers.

District of Columbia v R.W., No. 25-248 (4/20/2026)**SEARCH AND SEIZURE - Reasonable Suspicion**

LASJRP: The trial court denied R. W.’s suppression motion, relying on four facts to conclude that the officer had reasonable suspicion justifying a stop of R. W.: (1) the officer had received a radio dispatch call regarding a suspicious vehicle at a specified address, (2) the officer saw two persons fleeing from a vehicle upon his arrival, (3) it was almost 2 a.m., and (4) as the officer approached the car, it began backing out of the parking space while the rear driver’s side door was still open.

On appeal, the District of Columbia Court of Appeals ordered suppression. The court first assessed the legitimacy and weight of each of the factors before weighing the information all together. In the first step of this analysis, the Court of Appeals held that the trial court had erred by considering two factors: the radio dispatch call and the flight of R. W.’s companions. It excised those factors from the analysis. It then concluded that, without more, the remaining facts - the late hour and the car’s movement - did not give rise to reasonable suspicion.

The Supreme Court reverses, concluding that the Court of Appeals erred when it excised two factors, and that the “totality of the circumstances” test requires courts to consider the whole picture and precludes the evaluation and rejection of factors in isolation from each other.

The Court notes that although R. W. did not run, his companions’ flight cast his presence in a suspicious light; and that for most drivers, it would be a surprising event for their back-seat passengers to exit the car and run headlong away from them, but we doubt that most would respond by putting

their car into reverse and attempting to drive away without at least checking whether the doors were closed.

Fernandez v United States, No. 24-556 (5/28/2026)

Federal prisoners collaterally attacking the validity of their conviction must proceed through the postconviction statute, 28 USC 2255, not 18 USC 3582, which governs courts’ ability to shorten sentences for “extraordinary and compelling reasons.”

Concurrence: [Sotomayor, J] “[T]he judgment below should be affirmed on a different, far simpler ground A motion for compassionate release cannot justify a reduced sentence if it relies solely on facts a court already considered in imposing the initial sentence, rather than any changed circumstances that developed after sentencing.”

Dissent: [Jackson, J] The Court arbitrarily restricts the traditional discretion afforded to district courts, some of which was preserved by Congress in the compassionate-release statute amended as part of the First Step Act. Because the majority endorses “a habeas-based rule in reversing the District Court’s grant of compassionate release ... I respectfully dissent. I would vacate, rather than affirm, the decision of the Court of Appeals.”

Pitchford v Cain, No. 24-7351 (5/28/2026)**BATSON | FAILURE TO CONDUCT STEP 3 | PRESERVATION | REVERSED | DISSENT**

ILSAPP²: Petitioner Terry Pitchford filed a petition for a writ of certiorari to the Supreme Court (SCOTUS) after the U.S. Court of Appeals for the Fifth Circuit reversed the District Court’s decision granting Pitchford habeas relief. SCOTUS reversed the Fifth Circuit and remanded for further proceedings, holding that a Mississippi trial court had failed to conduct step 3 of the *Batson* test. “After a prosecutor asserts race-neutral reasons for a peremptory strike, the defense counsel must at least have an opportunity to argue that the asserted race neutral reasons were not the actual reasons—that is, that they were pretextual.” At Pitchford’s murder trial, the prosecutor used peremptory challenges to excuse four of the five black potential jurors. Defense counsel raised a *Batson* objection and the court conducted step two of the *Batson* inquiry by asking the prosecutor for race-neutral reasons for striking each of the four potential jurors. The trial court declared each of the prosecutor’s proffered reasons race-neutral and then ended the *Batson* analysis. The court erroneously omitted *Batson*’s third step and did not afford defense counsel an opportunity to rebut the prosecution’s reasons as pretextual or make any findings on pretext. When defense counsel attempted to raise the *Batson* issue again at the close of jury selection, the court cut off counsel twice, stating “I think you already made those, and they

² Summaries marked with these initials, ILSAPP, are courtesy of the New York State Office of Indigent Legal Services, from the ILS appellate listserv.

US Supreme Court *continued*

are clear in the record.” On direct appeal, the Mississippi Supreme Court concluded that Pitchford had waived his *Batson* objection by failing to argue pretext to the trial court, a ruling ultimately endorsed by the Fifth Circuit. SCOTUS reversed and held that the Mississippi Supreme Court “unreasonably applied the clearly established *Batson* precedents and unreasonably determined that Pitchford had waived his opportunity to rebut the prosecutor’s proffered race-neutral reasons at [step three].” While the Antiterrorism and Effective Death Penalty Act (AEDPA) standard for reviewing claims on federal habeas is deferential to the state court, “deference does not mean abdication.” Here, the trial court’s comments “explicitly assured [defense] counsel that the *Batson* objection was preserved,” and Mississippi’s argument that counsel preserved the *Batson* objection but waived the pretext argument “slices *Batson* way too thin.” The dissent (Gorsuch, J., joined by Thomas, Alito, and Barrett, JJ.) would have found that the Mississippi Supreme Court’s decision was reasonable under the AEDPA because Pitchford’s counsel never made a comparative juror argument during jury selection, and one of the trial attorneys even represented that she had failed to preserve the pretext argument. Phillips Black, Inc. (Joseph J. Perkovich, of counsel) represented Pitchford.

Rutherford v United States, No. 24-820 (5/28/2026)

Defendants sentenced before the First Step Act, which changed federal sentencing in several ways, are subject to the general rule of nonretroactivity and do not qualify for reduced penalties. Compassionate release under 18 USC 3582(c)(1)(A)(i) “is available only when a court finds that ‘extraordinary and compelling reasons warrant’ a sentence reduction. The disparity that results from Congress’s decision to leave a sentence untouched cannot serve as one of those reasons.”

Whitton v Dixon, No. 25-580 (6/1/2026)**FEDERAL HABEAS | IMPROPER CONSIDERATION OF POST-TRIAL EVIDENCE IN PREJUDICE ANALYSIS | SUMMARILY REVERSED | DISSENT**

ILSAPP: Petitioner filed a petition for a writ of certiorari to the U.S. Supreme Court, seeking review of an 11th Circuit Court of Appeals decision affirming the denial of his petition for a writ of habeas corpus, which sought vacatur of his Florida capital murder conviction, following a jury trial. The Supreme Court summarily reversed, vacated the judgment, and remanded for further proceedings, holding that the 11th Circuit improperly considered in its harmless error analysis inculpatory DNA testing that was not done until after trial. Under *Brecht v Abrahamson*, 507 US 619, 623 [1993][], “the standard for determining whether habeas relief must be granted is whether the constitutional error had substantial and injurious effect or

influence in determining the jury’s verdict” (internal alterations omitted). The 11th Circuit found that the prosecution had committed a *Giglio* violation when a jailhouse informant testified falsely at trial that he had no criminal history, and that perjured testimony was known to the prosecution. Thus, the question was whether petitioner was prejudiced by that error. The SCOTUS majority held that evidence that the decedent’s DNA profile was consistent with blood on petitioner’s boots could not be considered in the prejudice analysis, since that testing was done after trial and never presented to the jury. The Court remanded for the lower courts to conduct a proper prejudice analysis. The dissent (Thomas, J., joined in part by Alito, J.) would have affirmed, finding that (1) the 11th Circuit correctly concluded that petitioner was not prejudiced by any *Giglio* violation based on “overwhelming evidence” of guilt, even apart from the post-trial DNA evidence, and (2) petitioner failed to exhaust his state court claim. Trial Lawyers for Justice (Andrew Timothy Tutt, of counsel) represented Whitton.

Abouammo v United States, No. 25-5146 (6/11/2026)

A defendant charged with violating 18 USC 1519, knowingly falsifying a document with the intent to obstruct a federal investigation, must be tried in the district where the charged offense occurred. The defendant “cannot be tried in a different district where the investigation was located.”

United States v Hemani, No. 24-1234 (6/18/2026)**SECOND AMENDMENT | § 922(G)(3) UNLAWFUL USER PROVISION | AFFIRMED | CONCURRENCES**

ILSAPP: The government filed a petition for a writ of certiorari to the Supreme Court (SCOTUS) after the U.S. Court of Appeals for the Fifth Circuit affirmed the District Court’s decision granting Mr. Ali Hemani’s motion to dismiss the indictment charging him with possessing a gun while being an “unlawful user” of a controlled substance in violation of 18 USC § 922(g)(3). SCOTUS affirmed and held that the government’s prosecution of Hemani under § 922(g)(3)’s unlawful user provision violated the Second Amendment. Hemani was charged with knowingly possessing a gun in his home while being an unlawful user of marijuana, a controlled substance. This charge came more than six months after Hemani cooperated during a search of his family’s home, surrendered a gun kept in the house, pointed agents to marijuana on the property, and agreed to an interview during which he admitted using marijuana every other day. SCOTUS held that under *Bruen* (597 US 1 [2022]), § 922(g)(3) burdened conduct presumptively protected by the Second Amendment and did not fall within the nation’s historical tradition of firearms regulation. The government relied on historical “habitual drunkard” laws, but those comparisons were insufficient because those laws generally targeted people whose intoxication rendered them incapacitated or unable to manage their affairs. Those prohi-

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bitions also served different purposes because they targeted people who did not work or were at risk of drinking away their estates, rather than disarming “unusually dangerous['] individuals who will ‘misuse . . . firearms.’” Additionally, those laws provided some form of process before the individual lost their liberties, whereas § 922(g)(3) would automatically disarm any regular user of a controlled substance, regardless of the amount used, the effect of the drug use, whether the person posed any danger, or whether the firearm was kept safely in the home for self-defense. The Court acknowledged that its decision was narrow and did not address firearm bans for addicts, people who are presently intoxicated, or prosecutions supported by individualized proof that the person’s drug use made them dangerous. Justice Thomas concurred to question whether § 922(g)(3) exceeds Congress’s powers under the Commerce Clause. Justice Jackson, joined by Justice Sotomayor, concurred to criticize *Bruen*’s history and tradition test. Justice Alito, joined by Justice Kagan, concurred to explain that they would have affirmed only on the ground that “the Government’s analogies allowed disarmament only of those whose extreme use of an intoxicant (alcohol) incapacitated them habitually,” while § 922(g)(3) allows disarmament of those who merely “regularly us[e] a similar intoxicant.”

Hunter v United States, No. 24-1063 (6/18/2026)**APPEAL WAIVER | MISCARRIAGE OF JUSTICE RULE |
REMANDED | CONCURRENCES | DISSENT**

ILSAPP: Hunter filed a petition for a writ of certiorari to the Supreme Court (SCOTUS) after the U.S. Court of Appeals for the Fifth Circuit dismissed his appeal based on the appeal waiver provision of his District Court guilty plea. SCOTUS vacated the Fifth Circuit’s judgment and remanded for further proceedings. “[A]n appeal waiver is unenforceable when it would result in a miscarriage of justice”—meaning it would leave in place an “obvious” and “egregious error that would bring the judicial system into disrepute.” Hunter pled guilty and waived his right to appeal, but the sentence was “still-to-be-decided.” At sentencing, he objected to a supervised-release condition requiring him to take any mental health medication prescribed by his treating physician. The District Court imposed the condition and told Hunter he had a right to appeal, but the Fifth Circuit dismissed his appeal based on the waiver. In determining whether an appeal waiver is enforceable in the sentencing context, SCOTUS observed that enforcement of appeal waivers implicates not just the parties to the plea agreement, but also the judiciary, and that “automatic enforcement may ‘risk[] institutional harm.[.]’” The Court reasoned that adopting the miscarriage-of-justice limit—the majority approach among the federal appellate courts—would “offer a safety valve for extreme cases” and permit appellate

review despite an appeal waiver in extraordinary cases, such as where a sentence exceeds statutory authority, is infected by blatant constitutional error, or is imposed without basic procedural fairness. Because it is a “court of review, not of first view,” SCOTUS remanded for the Fifth Circuit to decide whether enforcing Hunter’s appeal waiver would result in a miscarriage of justice. Justice Gorsuch, joined by Justices Sotomayor and Jackson concurred to raise concerns about the prevalence of plea bargaining and appeal waivers. Justice Kavanaugh, joined by Justices Alito and Barrett, concurred to emphasize that the miscarriage-of-justice exception sets a “high bar.” Justice Barrett concurred to express skepticism regarding whether SCOTUS “possesses an inherent, supervisory authority over inferior federal courts.” Justice Thomas dissented and would have enforced Hunter’s waiver and dismissed his appeal because Hunter knowingly and voluntarily agreed to waive his appellate rights.

**T. M. v University of Maryland Medical System Corporation,
No. 25-197 (6/18/2026)****FEDERAL JURISDICTION - Rooker-Feldman Doctrine**

LASJRP: Under the Rooker-Feldman doctrine, federal district courts lack jurisdiction over cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments.

In a 5-4 decision, the Supreme Court holds that this rule bars suit when the state court judgment at issue is subject to further review in state appellate proceedings.

United States v Carter, No. 25-885 (6/22/26)**SEARCH AND SEIZURE - Stop/Consideration Of Race In
Seizure Determination**

LASJRP: The Supreme Court denies the petition for a writ of certiorari, declining to review a determination by the D.C. Court of Appeals (341 A.3d 1067) that the officer’s request that defendant hike his pants was a seizure due to the “elevated effect” that the request “would have had on an objective and reasonable Black man in [defendant’s] shoes.”

Justice Alito, joined by Justice Thomas, dissents, noting that this kind of special treatment is “dangerous,” that in this case the special treatment helped the individual but in other situations it will not, and that in any event the Court of Appeals’ test warrants this Court’s review.

McCarthy v Hernandez, No. 25-748 (6/22/2026)**HABEAS CORPUS | AEDPA | MIRANDA | MISSOURI v SEIBERT
| CONFESSIONS | REVERSED AND REMANDED**

ILSAPP: New York State filed a petition for a writ of certiorari to the Supreme Court (SCOTUS) after the U.S. Court of Appeals for the Second Circuit reversed Hernandez’s conviction and ordered habeas relief, holding that New York County Supreme

US Supreme Court *continued*

Court's response to a jury note in Hernandez's trial was contrary to and involved an unreasonable application of *Missouri v Seibert* (542 US 600 [2004]). SCOTUS granted certiorari and reversed the Second Circuit's grant of habeas relief. The Court held that the response to the jury note was not contrary to, or an unreasonable application of, clearly established federal law. In 2017, Hernandez was convicted of the 1979 kidnapping and murder of a six-year-old boy based entirely on his confession. Hernandez, who had a documented history of mental illness and a low IQ, confessed to the crime after a period of unwarned interrogation, then twice repeated the confession post-*Miranda*. During deliberations in his second trial (following a hung jury in the first), the jury sent a note asking whether they must disregard Hernandez's post-*Miranda* confessions if they found his initial unwarned confession involuntary. The trial court answered "no," without further explanation. SCOTUS held that no "clearly established federal law" "required the trial court to instruct the jury on the grounds for suppression set out in *Miranda* or *Seibert*." Further, even if *Seibert* established a rule of federal law cognizable in federal habeas, "*Seibert* concerned a trial court's ruling on a suppression motion, not a jury's assessment of attenuation" and SCOTUS has never applied *Seibert* in other procedural contexts. Nor did the trial court's response to the jury note violate Hernandez's right to due process because SCOTUS has never held that due process requires a trial court to explain to jurors an issue they are not required to decide. Finally, while the Second Circuit's opinion reflected "serious doubt about the reliability of Hernandez's confessions," "AEDPA does not allow a federal habeas court to disturb a state-court conviction based on such an evaluation of the evidence." Justices Sotomayor, Kagan, and Jackson would have denied the petition for a writ of certiorari.

Blanche v Lau, No. 25-429 (6/23/2026)

While a lawful permanent resident (LPR) arriving in the U.S. after a temporary absence is usually regarded as already "admitted," the Government may regard them as not admitted if they have committed certain crimes. Immigration law does not require that border officials have clear and convincing evidence that the LPR committed such a crime before finding that they must be treated as seeking admission. The government properly paroled Lau, an LPR facing a pending trademark counterfeiting charge when he returned after travel to China, allowing him to physically enter the U.S. pending a final decision on his admissibility. There has been no decision as to Lau's claim that the crime, to which he has now pled guilty, is not one involving moral turpitude, which affects admissibility and removability; the matter is remanded for further proceedings.

Dissent: (Jackson, J) Under the applicable statutory scheme,

"[t]he Government must, of course, make some determination about the applicability of one of the statutory exceptions before an LPR can be deemed 'seeking an admission' and paroled back into the country." The majority's result, and the serious consequences that flow from it, cannot be what Congress intended.

Landor v Louisiana Dept of Corrections and Public Safety, No. 23-1197 (6/23/2026)**PRISONERS RIGHTS - Religious Freedom/Suits Against Individual Officers**

LASJRP: The Religious Land Use and Institutionalized Persons Act of 2000 imposes conditions on federal funds distributed to state prison systems like the Louisiana Department of Corrections (LDOC). One condition requires prison systems to refrain from imposing "substantial burden[s] on the religious exercise[s]" of state prisoners outside exceptional circumstances. If a prison system fails to comply with that condition, Congress may cut off its funding. As a condition of funding, Congress also called on state prison systems to agree to answer suits by private plaintiffs alleging substantial burdens on their religious exercises.

Plaintiff is a Rastafarian whose religious convictions require him to leave his hair uncut. He alleges that prison officers shaved his head, causing him to violate his religious beliefs. He sued LDOC and the individual officers in their personal capacities. The district court dismissed the RLUIPA claims against both LDOC and the officers. On appeal to the Fifth Circuit, plaintiff did not challenge the dismissal of his claim against LDOC and focused on his claim against the individual officers. The Fifth Circuit held that RLUIPA "does not permit suits against officers in their individual capacities."

In a 6-3 decision, the Supreme Court affirms, holding that a plaintiff may not bring an RLUIPA suit against individuals, like the officers in this case, who have not formed any agreement with the federal government. Spending Clause statutes can bind only those who voluntarily and knowingly undertake obligations by agreement with the federal government. That essential element is missing here.

Wolford v Lopez, No. 24-1046 (6/23/2026)**POSSESSION OF A WEAPON - Second Amendment**

LASJRP: Before the Supreme Court's decision in Bruen (597 U.S. 1), Hawaii issued firearms carry licenses only in "exceptional case[s]." It appears that from 2000 to 2018, only four such licenses were issued. After Bruen, Hawaii and four other States adopted a new default rule that, instead of allowing all to enter private property open to the public unless specifically prohibited, provides that no one carrying a firearm may enter without express authorization via written or verbal authorization or the posting of clear and conspicuous signage.

In a 6-3 decision, the Supreme Court holds that the Hawaii law violates the Second Amendment. The Court notes that

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some proprietors who do not object to entry by carry-permit holders may be reluctant to post a sign welcoming them for fear of alienating other customers, and may only be willing to consent discreetly to the entry of permit holders who make the effort to inquire; that this arrangement imposes a new burden on permit holders who will have to somehow obtain permission to carry a firearm on the property before stepping foot on it; and that Hawaii has failed to identify “relevantly similar” colonial and early state laws.

Mullin v Al Otro Lado, No. 25-5 (6/25/2026)

In a 6-3 decision, the Court upheld a federal policy rejecting asylum seekers. For the purposes of the Immigration and Nationality Act, an “alien” arrives into the United States only when crossing a border; the Act does not entitle an asylum application for a petitioner standing at the border itself. Justice Alito centered the decision on the usage of the word arrive “[i]n ordinary speech.”

Dissent: (Sotomayor, J) “The consequences of today’s decision are predictable. More people will die. More people will attempt to cross the border illegally, and some will make it while others will not.”

Mullin v Doe, No. 25-1083 (6/25/2026)

In another 6-3 decision, the Court paused rulings from lower courts barring the government from removing Temporary Protected Status (TPS) designations for Syrian and Haitian immigrants. The federal law prohibiting judicial review for TPS claims is “is clear, and its plain meaning is very broad” according to the majority.

Dissent: (Kagan, J): TPS beneficiaries “ask for only one thing: that they may stay in this country while they continue to litigate their claims. ... they are entitled to that relief, and should not instead be consigned to devastating, and indeed life-threatening, injury.”

Chatrpie v United States, No. 25-112 (6/29/2026)**SEARCH AND SEIZURE - Geofence Warrants**

LASJRP: Law enforcement officers employ so-called geofence warrants to obtain information that technology companies collect about users’ cell-phone locations. Investigators may draw a “geofence” - a virtual perimeter - around the crime scene and get a warrant compelling a company to hand over data about the cell phones located in that area near the time of the crime. Following a process specified in the warrant, the company will turn over the cell-phone data and eventually identify by name one or more of the users thus disclosed.

In this case, the geofence warrant was directed to Google, and used to solve a bank robbery. Hundreds of millions of Google users have activated a service called Location History,

which records the location of a user’s cell phone every two minutes or so. Through a geofence warrant, police officers required Google to turn over Location History data revealing cell phones within the vicinity of a bank at around the time it was robbed. At the end of the multi-step process described in the warrant, Google gave the police three names, including defendant.

A Supreme Court majority - four other Justices join Justice Kagan’s opinion and Justice Gorsuch adopts different reasoning in a concurring opinion - holds that an individual has a reasonable expectation of privacy in records about his cell phone’s location. The Court of Appeals will have to determine whether the search was reasonable, meaning that each of its steps was properly described with particularity and found to be supported by probable cause.

In *Carpenter v. United States* (585 U.S. 296), which involved cell-site location information (a time-stamped record generated each time a cell phone connects to a cell site), the Court held that allowing government access to cell-site records contravenes expectations of privacy; and that when the Government accessed CSLI from wireless carriers, and obtained a “detailed log” of where Carpenter had gone for seven days, it invaded Carpenter’s reasonable expectation of privacy in the whole of his physical movements.

The resemblances between CSLI and Location History “practically leap off the page.” Location History also allows police officers to reconstruct retrospectively, and with no real effort, people’s comings and goings in any area. Location History records implicate privacy interests even more than CSLI data because the former is more the individual’s own. Most cell-phone users have no awareness of CSLI records and would never try to retrieve them. The records are instead the province of wireless carriers, which maintain them for an array of business functions.

Even two hours of Location History - the period involved here - allows officers to target one-off events of potential interest: a gun show, say, or a political rally. The Court has never understood Fourth Amendment protections as kicking in only once an intrusion “goes too far.” Where the Fourth Amendment applies, it applies - regardless of the quality or quantity of information the government obtains. The sweep of the official invasion is not made less because the government, with the benefit of hindsight, can pinpoint exactly which few hours of movements it wants to review.

The Court rejects the Government’s claim that by authorizing Google to collect, retain, and use his location information, defendant lost his legitimate expectation of privacy. In *Carpenter*, the Court refused to apply the third-party doctrine to CSLI, and no good reason exists to reach a different result for Location History.

Justice Gorsuch asserts that Location History qualifies under the Fourth Amendment as one of defendant’s papers and effects.

US Supreme Court *continued***Trump v Barbara, No. 25-365 (6/30/2026)****IMMIGRATION ISSUES - Birthright Citizenship**

LASJRP: The Fourteenth Amendment provides: “All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.”

A Supreme Court majority holds that the Constitution guarantees citizenship to children born of parents unlawfully or temporarily present in the United States. “Citizenship, then and now, was the right to have rights—to freely participate in our political community. The Framers of the Fourteenth Amendment extended that promise to “every free-born person in this land.”

West Virginia v B. P. J., No. 24-43 (6/30/2026)**TRANSGENDER RIGHTS - Women’s/Girls’ Sports**

LASJRP: A Supreme Court majority holds that under Title IX and the Equal Protection Clause of the Fourteenth Amendment, schools may determine eligibility for women’s and girls’ sports based on biological sex.

The texts of Title IX, the Javits Amendment, and the Title IX regulations do not say (or even hint) that schools must allow certain biological males to participate in women’s and girls’ sports, or say that schools must make an exception for those biological males who identify as female and have taken puberty blockers or hormones.

The Court need not definitively resolve whether rational basis review or intermediate scrutiny applies to transgender classifications. The classification here readily satisfies rational basis review or intermediate scrutiny. The States’ interests in ensuring safety and competitive fairness justify maintaining women’s and girls’ sports for biological females.

Even if some biological males who identify as female and take puberty blockers or hormones do not retain physical advantages over biological females, under intermediate scrutiny there still would be a sufficient relationship between the States’ classification and asserted interests. In any event, States and leading athletic organizations have concluded that biological males still retain a physical advantage after taking puberty blockers and hormones, and legislatures are far better equipped than the judiciary to amass and evaluate the vast amounts of data.

New York State Court of Appeals

In the online version of the *REPORT*, the name of each case summarized is hyperlinked to the opinion provided on the website of the New York Official Reports, www.nycourts.gov/reporter/Decisions.htm.

People v Palacios, 2026 NY Slip Op 02360 (4/16/2026)
SEARCH AND SEIZURE - Probable Cause/Fellow Officer Rule
 - “I-card”

- Hearing/Burden Of Going Forward

LASJRP: At the suppression hearing, a New York City Police Department detective testified that he created a “probable cause I-card” for defendant based on a conversation with a witness who reported an arson, but the arresting officers did not testify and the People presented no other evidence regarding the circumstances of the arrest.

The Court of Appeals suppresses defendant’s post-arrest statement, concluding that although the “fellow officer rule” permits an arresting officer to rely on information communicated by another officer in establishing probable cause, the People must put forth evidence demonstrating that the arresting officer received such information and relied on it in making the arrest. Here, the People failed to meet that burden.

Although the People contend that the circumstantial evidence suffices since defendant was arrested one day after the I-card was created and taken to the precinct where the detective was based, this evidence is too limited to establish that the arresting officers stopped and arrested defendant in reliance on probable cause allegedly communicated by the I-card.

People v Ehinmiakhena, 2026 NY Slip Op 02363 (4/21/2026)
SUPPRESSION | LEGALITY OF VEHICLE STOP |

REVERSED & REMITTED | DISSENT

ILSAPP: Appellant appealed from an Appellate Term, First Department order affirming his conviction. The Court of Appeals reversed and remitted to New York City Criminal Court for further proceedings. When Criminal Court denied appellant’s motion it did not address the legality of the vehicle stop or whether the officer’s post-stop observations (aside from appellant’s identity and DMV records) should be suppressed. The Court remitted for a suppression hearing because “the legality of the stop may be essential to determining the suppressibility of post-stop observations.” The partial dissent (Wilson, C.J.) agreed that Criminal Court erred by denying a suppression hearing but would have reversed and dismissed the accusatory instrument. Appellant made sufficient factual allegations to require a hearing, and the prosecution failed to provide any factual basis for the stop. In Chief Judge Wilson’s view, remittal nearly 10 years after the traffic stop “for the purpose of sustaining a conviction for unlicensed driving is a fool’s errand.” The Legal Aid Society of NYC (Kristina Schwarz, of counsel) represented Ehinmiakhena.

People v Roper, 2026 NY Slip Op 02365 (4/21/2026)**SPEEDY TRIAL - CPL § 30.30 Motion Practice**

LASJRP: A motion to dismiss must be granted where the People are not ready for trial within ninety days of the commencement of misdemeanor charges. The defendant must

NY Court of Appeals *continued*

file the motion prior to the commencement of trial or entry of a plea of guilty (CPL § 170.30[2]), in writing and upon reasonable notice to the people (CPL § 210.45[1]; CPL § 170.45).

The Court of Appeals holds that defendant's CPL § 30.30 motion, made in writing before his bench trial on misdemeanor charges began, was timely and provided the People with reasonable notice, and that the Appellate Division erred in upholding the summary denial of that motion,

For speedy trial motions, CPL § 170.30(2) sets the specific time frame and that deadline is not altered by the statutory reasonable notice provision. There is good reason for the distinction between the specific timing requirement for speedy trial motions and the timing applicable to other pretrial motions generally. For a speedy trial motion to succeed, a court must find that the necessary number of days should be charged to the People, and determining which days are chargeable is at times complex; a defendant seeking dismissal based on a speedy trial violation may wish to accumulate as many chargeable days as possible.

People v Woods, 2026 NY Slip Op 02364 (4/21/2026)**SPEEDY TRIAL - Constitutional**

LASJRP: Three juries deadlocked and failed to convict defendant on murder and criminal weapon possession charges. The prosecution retried defendant within months after each of the first two trials but then delayed more than three years before proceeding with the fourth trial.

In a 4-3 decision, the Court of Appeals agrees with defendant, who moved to dismiss 32 months after the third mistrial, that the prosecution failed to justify the final lengthy delay. The Court notes, *inter alia*, that the prosecution did not provide any particular reasons why its decision whether to retry defendant took so long; that both the court and defense counsel stated that they were unaware of what the District Attorney's office was doing for much of the delay; that although at the fourth trial the prosecution put forth some new evidence, the prosecution did not claim that identifying or preparing additional witnesses caused any part of its delay; that while defendant's incarceration during the delay was due to another crime, a defendant's imprisonment for another crime cannot excuse delay; and that defendant was prejudiced because a witness died two years and six months after defendant's third trial, which necessitated readbacks of his prior testimony at the fourth trial that deprived the jury of the opportunity to assess the witness's credibility in person.

The prosecution bears the burden to move forward within a justifiable amount of time, and it is not defense counsel's role to remind the prosecution of this duty. While the dissent would remand for a hearing rather than decide defendant's motion to dismiss now, this approach would unnecessarily prolong this

proceeding and give the prosecution an unwarranted second opportunity to marshal facts after failing to meet their burden of raising a factual dispute on a material point.

People v Burgess, 2026 NY Slip Op 02438 (4/23/2026)**FACIAL SUFFICIENCY | CPW 4 REQUIRES ALLEGATIONS OF OPERABILITY | REVERSED & REMITTED | DISSENT**

ILSAPP: Appellant appealed from an Appellate Term, First Department order affirming his conviction of fourth-degree CPW, following his guilty plea. The Court of Appeals reversed, vacated the guilty plea, and remitted for further proceedings on the accusatory instrument. The misdemeanor information was facially insufficient because it lacked any allegations regarding the operability of the firearm as required for fourth-degree CPW. Accordingly, the Court restored the case to its "pre-pleading status" because the dismissal of the felony counts was "best understood as an integral component" of the plea. The dissent (Rivera, J., joined by Wilson, J.) would have dismissed the accusatory instrument in its entirety, relying on *People v Johnson* (5 NY3d 752 [2005]) for the proposition that the felony counts were validly dismissed with the prosecution's consent and could not be revived upon remittal. According to the dissent, the majority's approach gave the prosecution "a windfall by giving it a second bite at the apple and a chance to cure a known deficiency." The Legal Aid Society of NYC (Ji Hyun Rhim, of counsel) represented Burgess.

People v N.H., 2026 NY Slip Op 02437 (4/23/2026)**PLEAS - Waiver Of Rights****SENTENCE - Domestic Violence Survivors Justice Act**

LASJRP: In a 4-3 decision, the Court of Appeals holds that a defendant may not, as a condition of a negotiated plea agreement, waive a Penal Law § 60.12 hearing to determine eligibility for an alternative sentence under the Domestic Violence Survivors Justice Act.

The statutory framework and purpose of the DVSJA reveal the Legislature's intent to mitigate a systemic failure of the criminal legal system, which led to unduly harsh sentencing of domestic violence survivors. Because our system is predominantly one of pleas rather than trials, allowing waiver would eviscerate this alternative sentencing pathway for the vast majority of domestic violence survivor defendants who plead guilty.

Matter of Abdoch v Abdoch, 2026 NY Slip Op 03219**(5/21/2026)****CUSTODY - Appeals/AFC Authority To Appeal**

LASJRP: In this Family Court custody proceeding, the father petitioned to modify the custody order, and the mother filed a competing petition. The attorney appointed to represent the four children opposed the father's petition and asserted that the children wished to continue living primarily with the mother.

NY Court of Appeals *continued*

The Family Court determined that modification was warranted and awarded the parents joint custody.

The AFC filed an appeal, and although the mother did not file her own appeal, she appears to have filed a letter with the Appellate Division supporting the children's appeal. The father did not appear in connection with the appeal. The Appellate Division dismissed the appeal, following Fourth Department precedent holding that children in custody matters cannot appeal independent of the parent-parties.

The Court of Appeals reverses, holding that under the plain language of the Family Court Act, an attorney for the child has the authority to appeal a custody determination when the subject child is aggrieved even though the child is not a full party to the custody proceedings. Family Court Act § 1120(b) provides that the AFC's appointment continues when "the attorney on behalf of the child files a notice of appeal," and FCA § 1115 provides that an appeal is taken by filing a notice of appeal, which begins the appellate process.

Here, the children were aggrieved as the AFC argued against modifying the original custody order designating the mother as the primary custodial parent.

The Court does not address how a parent's participation or failure to participate in an appeal may bear on other issues raised on appeal.

**Matter of Lawyers for Children v New York State Off. of
Children & Family Servs.,
2026 NY Slip Op 03218 (5/21/2026)
HOST FAMILY HOME PROGRAM**

LASJRP: Under the Host Family Home program (see 18 NYCRR Part 444), the New York State Office of Children and Family Services designates a "host family home agency" as an "authorized agency" under the Social Services Law. A parent can contact any host family home agency directly to request placement for their child. The agency then identifies a potential host family that could care for the child. If the parent agrees with the placement, they sign a "Declaration of Person in Parental Relation" which authorizes the host family to house the child and make certain decisions. Parents can place their children for up to six months, and placement can be extended for six-month increments until the child turns eighteen. Parents retain legal custody of their child and can demand their immediate return at any time. There is no requirement of judicial intervention.

Three legal services organizations that contract with state agencies to represent children in voluntary foster care proceedings filed this CPLR article 78 petition seeking to annul the Host Family Home program. The Appellate Division upheld the denial of relief in a 3-2 decision.

The Court of Appeals reverses, holding that OCFS lacked the authority to establish the Host Family Home program.

Petitioners had standing to bring this proceeding given that, under the unique circumstances of this case, they are the parties best situated to vindicate children's interest in the statutory right to counsel under the voluntary foster care system, and it is exceedingly unlikely that children would be able to effectively seek counsel to mount this challenge without petitioners' involvement.

Respondents cannot find authorization for this comprehensive regulatory program in a right that belongs to parents. The program does not further the goal of preventive services that keep children out of foster care since the program is a kind of foster care program, nor can the program be analogized to "respite care," which is the temporary care and supervision of a child to relieve parents where immediate relief is needed to maintain or restore family functioning.

Under the program, courts need not approve placements lasting longer than thirty days or assess the well-being of a child left in foster care for over eight months. Because the courts are not involved, the State need not provide assigned counsel to parents or children, nor is OCFS required to identify known friends or relatives who might care for the child, or offer any government-paid preventive services, before allowing parents to access host family care.

The program's elimination of legal protections risks diverting children away from the voluntary foster care system since a parent would have virtually no reason to seek voluntary foster care if they can instead opt for host family care. While many of the statutory limitations on foster care can be frustrating to parents, these limits reflect the considered policy judgment of the legislature in balancing the interests of parents and children with the overall safety and stability of the foster care system.

**People v Flesch, 2026 NY Slip Op 03258 (5/26/2026)
SENTENCE - Violation Of Plea Bargain By Prosecutor**

LASJRP: The Court of Appeals rejects a claim by defendant, who was sentenced to a four-year determinate prison term to be followed by three years' post-release supervision, that he should be re-sentenced before a different judge because the newly-elected District Attorney, who was later disqualified because of a conflict of interest and replaced by a special prosecutor, failed to recommend probation, as initially promised under the plea agreement. Judges Wilson and Halligan dissent.

Although the District Attorney appeared and requested that the court not impose the probation sentence agreed to by the prior District Attorney's office, his statements were not binding on the special prosecutor or a proper consideration for the sentencing court. After the court determined that the negotiated sentence was illegal, defendant received the benefit of his bargained-for plea deal when the special prosecutor said he was "certainly fine with" shock probation. Defendant chose not to withdraw his plea despite several invitations by the court

NY Court of Appeals *continued*

even after the court made clear that it would impose incarceration as required by the statute.

The dissenting judges note that the sentencing court determined that the charges, which arose from relatively minor physical altercations with peace officers - possibly fueled by defendant's mental illness - did not require incarceration so long as defendant received treatment, which was not available. The "criminal justice system has failed defendant," and "it is up to the three branches of government to invest in access to mental health treatment for the benefit of all New Yorkers."

People v Harris, 2026 NY Slip Op 03260 (5/26/2026)
DOUBLE JEOPARDY - CPL § 40.40/ "Same Criminal Transaction"

LASJRP: The Court of Appeals, in a 5-2 decision, holds that the indictment charging defendant with murder in the second degree is not barred by CPL § 40.40(2) where defendant had previously pleaded guilty on a separate indictment to criminal possession of a firearm.

The two offenses - simple possession of the firearm on November 21 and murder with the firearm the day before on November 20 - were not part of the "same criminal transaction," and the separate indictments do not result in the type of multiple, successive or harassing prosecutions CPL § 40.40 is intended to prohibit.

The possession could have been completed months in advance or on the day after the murder. All the evidence presented to the grand jury was intended to establish the acts underlying the simple possession offenses. The prosecution did not press the narrative of the murder and did not argue that defendant should be charged with possession because she shot her grandmother.

People v Meyers, 2026 NY Slip Op 03261 (5/26/2026)
APPEAL - Record On Appeal/Reconstruction

LASJRP: During defendant's trial, the primary stenographer failed to capture substantial portions of the proceedings and frequently recorded "blah blah blah," "blah blah," "omitted," "untranscribable" or undecipherable characters. The Appellate Division ordered a reconstruction hearing, and the Appellate Division affirmed the convictions based on the original trial record as supplemented by the proof presented at the reconstruction hearing.

The Court of Appeals affirms. Defendant failed to establish that the reconstruction hearing was futile. No trial exhibits were lost. Most of the trial was transcribed and available, and the hearing included testimony from the trial judge and his confidential law clerk, two court clerks, the trial prosecutors and the defense attorneys. The reconstruction court admitted 124 pages of detailed notes taken by the judge, the challenge

sheet from trial, the prosecutor's jury charge notes, jury selection notes by the prosecutor and the verdict sheet. Defendant failed to show those sources could not satisfactorily demonstrate whether genuine appealable and reviewable issues do or do not exist.

The loss of records - even an entire trial transcript - does not show that the right to appeal must be deemed to be frustrated. The active participation of defense counsel in the reconstruction hearing provides significant assurance that, had there been material appealable issues that arose, counsel would recall them. The trial judge's relatively detailed notes would likely have reflected any significant appealable issues raised at trial. Defendant's failure to identify appealable issues, despite a significant portion of the record that survived and the balance substantially reconstructed, makes clear that he has failed to rebut the presumption of regularity.

People v Guerra, 2026 NY Slip Op 03905 (6/18/2026)
RIGHT TO COUNSEL - Effective Assistance

LASJRP: Prior to defendant's trial on 68 counts of promoting and possessing a sexual performance by a child, his counsel signed a stipulation which defendant contends effectively conceded guilt. When counsel realized her error, she expressly disclaimed any strategic explanation for the relevant paragraphs of the stipulation and openly declared herself ineffective.

The Court of Appeals agrees with the Appellate Division that defendant received ineffective assistance. Counsel reasonably conceded the content of the images as part of her defense strategy to limit the images that were shown to the jury and conceded defendant's possession of the laptop when the images were found. But paragraphs 4 and 5 of the stipulation provide that "whoever possessed" the videos "promoted" a sexual performance by a child "with knowledge of the character and content of the videos," and that "whoever possessed" the images did so "knowingly." The record reveals no other strategic reason for agreeing to those paragraphs' vital legal concessions.

People v Kelley, 2026 NY Slip Op 03904 (6/18/2026)
APPEAL - Dismissal Due to Delay

LASJRP: The Court of Appeals notes that in connection with dismissal of a criminal appeal for failure of timely prosecution or perfection, the Court has identified as relevant factors: (1) the length of the appellant's delay; (2) the reasonableness of any excuse for the delay, including whether the appellant received clear instructions on how to pursue an appeal and whether the delay was strategic or resulted from a belated change in strategy; and (3) the specific prejudice, if any, the respondent has suffered from the delay.

Under the circumstances here, including the People's concession, the Appellate Division abused its discretion in dismissing defendants' appeals.

NY Court of Appeals *continued***People v Khiamdavanh, 2026 NY Slip Op 03903 (6/18/2026)****MISSING WITNESS INFERENCE - Cumulative Testimony**

LASJRP: Defendant's convictions for, inter alia, attempted murder in the second degree arose from an altercation at a traffic signal where defendant shot and permanently paralyzed the victim. Defendant asserted a justification defense. Defendant, defendant's son, the victim, and one of the two other men travelling in the victim's car testified to the events. Because the People did not call the third man travelling in the victim's car to testify, defendant requested a missing witness instruction. The trial court denied defendant's request on the ground that the missing witness's testimony would have been cumulative.

The Court of Appeals finds no error. The People met their burden to show that the missing witness's testimony would have been cumulative by specifically directing the court to the trial testimony and the supporting deposition of the missing witness, which recounted the witness's observations of the charged conduct. Because defendant requested the missing witness charge after the close of evidence, the court evaluated the request with knowledge of all evidence in the record, in-

cluding four witnesses' trial testimony and video evidence depicting the encounter from different angles, recorded by two different sources. Defendant failed to meet his ultimate burden to show the charge would be appropriate.

People v Matthews, 2026 NY Slip Op 03908 (6/18/2026)**PLEAS - Voluntariness/Waiver Of Claim****APPEAL - Waiver Of Right**

LASJRP: The Fourth Department held that defendant's valid appeal waiver barred review of his claim that the trial court erred by failing to make an appropriate inquiry into his requests for new counsel, "except to the extent that the contention implicates the voluntariness of the plea," and also held that "[t]o the extent that defendant's contention implicates the voluntariness of the plea, we conclude that defendant abandoned his requests when he decided to plead guilty while still being represented by the same attorneys."

The Court of Appeals reverses, concluding that defendant did not abandon his voluntariness claim. The fact that defendant pleaded guilty while represented by the same attorneys, and did not renew his complaints about counsel, does not indicate an intentional choice to abandon review of the voluntariness of his plea.

**Basic Trial Skills Program Class of 2026**

(More photos on p. 12.)

First Department

In the online version of the *REPORT*, the name of each case summarized is hyperlinked to the opinion provided on the website of the New York Official Reports, www.nycourts.gov/reporter/Decisions.htm.

People v Delacruz, 245 AD3d 611 (1st Dept 1/27/2026)**SORA | IMPROPER POINTS ASSESSMENT: PRIOR CRIMINAL HISTORY | FACTOR 9 | AFFIRMED**

ILSAPP: Appellant appealed from a Bronx County Supreme Court order adjudicating him a level three sexually violent offender under SORA. The First Department affirmed but found that the SORA court had improperly assessed 30 points under factor 9 relating to appellant's prior criminal history. The record did not contain clear and convincing evidence of a YO adjudication for EWC. The prosecutor "conceded at the hearing that she sought to verify the existence of the adjudication but that her review of [appellant's] criminal history did not confirm it." The record only supported a 15-point assessment based on clear and convincing evidence of a prior conviction for a non-violent felony. But a reduction of 15 points did not alter appellant's presumptive risk level. (Supreme Ct, Bronx Co)

People v Richards, 245 AD3d 617 (1st Dept 1/27/2026)**EXCESSIVE SENTENCE | PRS | MODIFIED**

ILSAPP: Appellant appealed from a Bronx County Supreme Court judgment convicting him of attempted first-degree assault and sentencing him to 3 1/2 years' imprisonment plus 5 years' PRS. The First Department reduced the PRS term to 3 1/2 years in the interest of justice. The court noted that the "record [did] not establish a valid appeal waiver." Office of the Appellate Defender (Ronald Zapata, of counsel) represented Richards. (Supreme Ct, Bronx Co)

People v Thompson, 245 AD3d 609 (1st Dept 1/27/2026)**PROBATION | IMPROPER CONDITIONS: SUPPORTING DEPENDENTS & GANG AFFILIATION | MODIFIED**

ILSAPP: Appellant appealed from a New York County Supreme Court judgment convicting him of third-degree CPCS and sentencing him to 3 years' probation. The First Department struck the probation conditions requiring appellant to support family members and to refrain from displaying or wearing gang paraphernalia or associating with gang members if directed by the Department of Probation. There was no evidence that appellant had children requiring his support, and nothing connected appellant's actions to gang activity. These conditions were not reasonably related to rehabilitation or necessary for appellant to lead a law-abiding life. Center for Appellate Litigation (Leanna J. Duncan, of counsel) represented Thompson. (Supreme Ct, New York Co)

People v Ramos, 245 AD3d 652 (1st Dept 1/29/2026)**INVOLUNTARY PLEA | SENTENCE EXPOSURE MISREPRESENTED | REVERSED & REMITTED**

ILSAPP: Appellant appealed from a New York County Supreme Court judgment convicting him of attempted first-degree rape (two counts) and sentencing him to consecutive terms of 10 years and 12 1/2 years' imprisonment, and from an order denying his CPL § 440.10 motion. The First Department reversed, vacated the plea, and remitted for further proceedings. The plea court improperly told appellant that he faced consecutive 15-year prison terms if he was convicted on both counts after trial. At most he was facing 20 years because of the statutory cap contained in PL § 70.30(1)(e)(i). The 20-year sentence to which he agreed was the maximum term he would serve. The court noted that appellant "remained conflicted about pleading guilty and sought to withdraw his plea." The prosecution conceded, under these circumstances, that the plea was involuntary. Center for Appellate Litigation (Jane Merrill, of counsel) represented Ramos. (Supreme Ct, New York Co)

Matter of Borrero v New York City Department Social Services Freedom of Information Law Office, 246 AD3d 402 (1st Dept 2/3/2026)**FREEDOM OF INFORMATION LAW**

LASJRP: The First Department upholds a determination by DSS that any records related to the pregnancy of the woman who claimed in Family Court that petitioner is the father of her child are exempted from FOIL disclosure. (Supreme Ct, New York Co)

People v Carr, 246 AD3d 413 (1st Dept 2/3/2026)**CONDITIONAL GUILTY PLEA | CONDITIONS SATISFIED | MODIFIED**

ILSAPP: Appellant appealed from a Bronx County Supreme Court judgment convicting him, following his guilty plea, of attempted first-degree reckless endangerment and first-degree reckless endangerment and sentencing him to 1 1/2 to 3 years' imprisonment. The First Department modified the judgment by vacating the plea to first-degree reckless endangerment and dismissing that count. Appellant entered a conditional plea agreement requiring that he initially plead guilty to both first-degree attempted reckless endangerment and an additional count of first-degree reckless endangerment, with the understanding that the reckless endangerment count would be dismissed if appellant returned to court and was not rearrested. Appellant satisfied those conditions, and the sentencing court imposed the promised sentence but failed to announce that it was vacating the plea to the reckless endangerment count. Appellant's compliance with the agreement required that the reckless endangerment count be vacated. Center for Appellate Litigation (Frances C. Klein Weil, of counsel) represented Carr. (Supreme Ct, Bronx Co)

First Department *continued***People v Doctor, 246 AD3d 411 (1st Dept 2/3/2026)
APPEAL WAIVER | CONFLATION OF APPELLATE & TRIAL
RIGHTS | WRITTEN WAIVER DID NOT CURE |
SURCHARGES & FEES | MODIFIED**

ILSAPP: Appellant appealed from a New York County Supreme Court judgment (Biben, J.) convicting him, following his guilty plea, of first-degree rape and sentencing him to 7 years' imprisonment. The First Department modified by vacating the surcharges and fees but otherwise affirmed. The appeal waiver was invalid: the plea court did not explain that the appellate rights were "separate and distinct" from those automatically waived by pleading guilty; that ordinarily appellant could appeal; or "that a waiver of the right to appeal is not an absolute bar to direct appeal and that some issues are not waivable." Additionally, the court implied that appellant would only have been allowed to appeal following a trial, and appellant, who had no prior convictions, might not have understood that the right to appeal did not only encompass trial errors. The "detailed written waiver" could not save the errors in the court's oral colloquy. The Legal Aid Society of NYC (Paris DeYoung, of counsel) represented Doctor. (Supreme Ct, New York Co)

Matter of E.G., 246 AD3d 405 (1st Dept 2/3/2026)

The court upheld a finding of sexual abuse of the subject child when the respondent did not offer an innocent explanation as to why he was touching "the crotch area" of the child's panties, and in any case, the child was not capable of consenting. The finding of derivative abuse of the respondent's biological child, who was sleeping in the home at the time of the alleged abuse and woke up to the subject child screaming, was also upheld: "The finding that respondent sexually abused the subject child demonstrated a fundamental defect in his understanding of the responsibilities of parenthood and placed his biological child, who was in the home during the incident of the abuse, at imminent risk of neglect." The court additionally noted that it was appropriate for the family court to draw a negative inference against the respondent father, as "sexual gratification may be inferred from a totality of the circumstances and the respondent failed to testify and offer an innocent explanation for his actions."

**People v Black, 246 AD3d 441 (1st Dept 2/5/2026)
ACCUSATORY INSTRUMENTS - Waiver Of Indictment**

LASJRP: During the Covid-19 pandemic, defendant orally agreed at a virtual appearance to waive indictment. Technical issues prevented him from signing a waiver and the court initialed the waiver on defendant's behalf.

The First Department vacates defendant's guilty plea, concluding that the waiver was jurisdictionally defective. The court's initials on the waiver did not satisfy the constitutional and statutory requirement that defendant sign the waiver in open court. (Supreme Ct, Bronx Co)

**Matter of D.B., 246 AD3d 425 (1st Dept 2/5/2026)
ABUSE/NEGLECT - Disposition - Motion To Modify/
Suspended Judgment****- Motion To Vacate Fact-Finding**

LASJRP: The First Department upholds the denial of respondent mother's motion for an order modifying an order of disposition to provide for a suspended judgment, vacating orders finding that she abused her then eleven-year-old son and derivatively neglected the other three children, and dismissing the petitions.

The mother intentionally dumped extremely hot water on the child, causing third-degree burns covering a significant portion of the left side of his torso and his back. The mother failed to seek immediate medical attention and waited three days before taking the child to the hospital. Although the mother has complied with services, she continues to lack insight into the seriousness of the child's injuries and has failed to show remorse. Throughout the proceeding, the court observed that the mother appeared to be annoyed and inconvenienced with the court's involvement with her family. The mother never requested an evidentiary hearing, nor was one warranted.

The JRP appeals attorney was Polixene Petrakopoulos. (Family Ct, Bronx Co)

**Matter of A.C., 246 AD3d 459 (1st Dept 2/10/2026)
ABUSE/NEGLECT - Leaving Children Alone -
Excessive Corporal Punishment**

LASJRP: The First Department upholds a finding of neglect where respondent's eleven-year-old child told a caseworker who knocked on the door that the child was alone with nine- and six-year-old siblings, and that the mother told the child to lie about being home alone should a caseworker visit the home; the eleven-year-old child also reported that the mother often left the three younger children home alone, including at night, and did not tell them where she was going, and this statement was corroborated by the child's thirteen-year-old and nine-year-old siblings, who reported to the caseworker that the mother left them alone often, including overnight; and although the family court previously ordered the mother to properly supervise the children and comply with a referral to preventive services, the mother refused services and, a few months later, shelter staff again found that the three younger children were left alone.

The Court also upholds a finding of excessive corporal punishment where the mother, when her absence was discovered this second time, hit the eleven-year-old child with a phone and tried to leave the shelter with the children; and two of the children reported to the caseworker that the mother would discipline them by hitting them with phone charger cords and belts.

The JRP appeals attorney was Susan Clement, and the trial attorney was Tracy McNeil. (Family Ct, Bronx Co)

First Department *continued*

People v Croney, 2026 NY Slip Op 00630
(1st Dept 2/10/2026)

**DVSJA | AD SPLIT: APPEALABILITY OF DISMISSAL |
TEMPORAL NEXUS | AFFIRMED**

ILSAPP: Appellant appealed from a New York County Supreme Court order dismissing, without a hearing, his application pursuant to the Domestic Violence Survivors Justice Act (DVSJA: CPL § 440.47) seeking resentencing on a 2013 first-degree manslaughter conviction for which appellant was sentenced to 18 years' imprisonment. The First Department held that the order was appealable but affirmed the summary denial. The decision deepened the split among the Appellate Divisions on whether a lower court's dismissal of a DVSJA resentencing motion for lack of sufficient corroboration is an appealable order. Agreeing with the Second Department (*see, e.g., People v Nymeen C.* [-- AD3d --, 2026 NY Slip Op 00144 (2d Dept 2026)]) and disagreeing with the Third Department (*see, e.g., People v Melissa OO.* [234 AD3d 101 (3d Dept 2024)]), the First Department relied on the text of CPL § 440.47(3)(a), which establishes an appeal as of right from a denial of DVSJA resentencing, without any qualifier as to whether the denial occurs before or after a hearing. The court did not address either the legislative history or the semantics of *dismissal* versus *denial*, a distinction that was central to the contrary holding in *Melissa OO.* On the merits, the First Department held that summary denial was proper because appellant did not submit sufficient corroborating evidence that he was a victim of domestic violence "at the time of the offense." Neither the concededly "horrific" abuse he suffered from his adoptive mother as a child, the alleged sexual abuse by his adoptive father 2 or 3 years pre-offense, nor the DIR-supported altercations with that father 10 months prior to the offense satisfied the temporal nexus requirement. Center for Appellate Litigation (Carola Beeney, of counsel) represented Croney. (Supreme Ct, New York Co)

People v J.W., 246 AD3d 475 (1st Dept 2/10/2026)
YO SURCHARGES & FEES UNAUTHORIZED | MODIFIED

ILSAPP: Appellant appealed from a New York County Supreme Court judgment convicting him of third-degree robbery, adjudicating him a youthful offender, and sentencing him to a 1-year jail term. The First Department modified by vacating the surcharges and crime victim assistance fee. "The statutory provisions authorizing the imposition of mandatory surcharges and crime victim assistance fees upon youthful offenders were repealed effective August 24, 2020" before appellant was sentenced. "Accordingly, the sentencing court had no authority to impose the surcharge and fee." Center for Appellate Litigation (Benjamin G. Wiener, of counsel) represented J.W. (Supreme Ct, New York Co)

People v M.O., 246 AD3d 476 (1st Dept 2/10/2026)
**YO NOT DETERMINED | SURCHARGES & FEES |
MODIFIED & REMITTED**

ILSAPP: Appellant appealed from two Bronx County Supreme Court judgments convicting him, following his guilty pleas, of second-degree hindering prosecution and attempted second-degree CPW and sentencing him to 1-year and 2-year concurrent terms of incarceration. The First Department modified the CPW conviction by vacating the surcharges, DNA fee, and crime victim assistance fee, and remanded for the court to consider appellant's eligibility for youthful offender status on the hindering prosecution count. The Legal Aid Society of NYC (Graham Ball, of counsel) represented M.O. (Supreme Ct, Bronx Co)

Matter of N.H., 246 AD3d 464 (1st Dept 2/10/2026)
**ABUSE/NEGLECT - Respondent/
Person Legally Responsible**

LASJRP: The First Department affirms a determination, after a hearing, that respondent was a person legally responsible for N.H. where respondent did not testify and the court was entitled to draw the strongest negative inference against him that the opposing evidence would allow; and the mother testified that he is N.H.'s biological father, was the mother's fiance and lived with her prior to his arrest, and held himself out as N.H.'s father.

The fact that respondent was removed from the home before N.H. was born, due to his arrest and prosecution on the charges that gave rise to these petitions (JRP's brief on appeal reveals that a petition was filed alleging that respondent sexually abused a ten-year-old child who lived in the home), does not outweigh the evidence that respondent is a person legally responsible for the child.

The JRP appeals attorney was Diane Pazar, and the trial attorney was Cynthia Rivera. (Family Ct, New York Co)

People v Porter, 246 AD3d 477 (1st Dept 2/10/2026)
**SEARCH AND SEIZURE - Common Law Right To Inquire
- Reasonable Suspicion**

LASJRP: The First Department concludes that the anonymous call describing a Black man wearing a white t-shirt involved in a dispute with a gun in the lobby of a specified building provided a founded suspicion that criminal activity was afoot when the officer observed defendant - a Black man wearing a light colored t-shirt - "right by the entrance to the building" reported in the call, two minutes after the transmission, and defendant was the only person at the location who matched the radioed description.

The police had reasonable suspicion when the officer, approaching in a marked vehicle, observed defendant walking quickly toward a black vehicle that was moving slowly

First Department *continued*

through the crosswalk, and defendant entered the front passenger seat of the car, which quickly drove away before defendant closed the car door. This “unusual” behavior drew the officer’s attention to defendant. (Supreme Ct, New York Co)

Matter of Zareh, 2026 NY Slip Op 00619
(1st Dept 2/10/2026)

ETHICS - Misuse Of AI/Fabrication Of Legal Authorities

LASJRP: The First Department grants a motion by the Attorney Grievance Committee for reciprocal discipline predicated on discipline imposed by the United States District Court for the Northern District of Texas and publicly censures respondent for submitting a brief that contained numerous citation errors and repeatedly misrepresented case law for propositions it did not support.

The Texas court found the drafting associate’s denials of AI use not to be credible and that the brief was AI-generated. Respondent conceded that he had failed in adequately supervising the drafting attorney and the Texas court found that counsel’s denial of the use of AI while admitting to not having reviewed the cited cases constituted bad faith. This conduct, which violated the Federal Rules of Civil Procedure, would constitute misconduct in violation of the New York Rules of Professional Conduct, rules 3.1(a) and 3.1(b)(1). (Grievance Committee)

Matter of Brittany W. v Miles-Gustave, 246 AD3d 491
(1st Dept 2/17/2026)

**ARTICLE 78 | STATE CENTRAL REGISTRY DETERMINATION
 SUPPORTED BY SUBSTANTIAL EVIDENCE |
 CONFIRMED & DISMISSED | DISSENT**

ILSAPP: Petitioner brought an Article 78 proceeding to challenge a determination of the New York State Office of Children and Family Services (OCFS) denying her request to amend a State Central Registry report of child maltreatment as unfounded. The First Department confirmed OCFS’ determination and dismissed the petition, with one justice dissenting. The underlying allegations were that the child was exposed to domestic violence after petitioner brought the infant to the father, who had physically abused her in the past. The majority held that substantial evidence supported the finding of child maltreatment, where the child was at risk of harm due to the mother’s actions, and that she had “ample resources and options available to her” related to her status as a domestic violence survivor, indicating she failed to exercise a minimum degree of care. The dissent (Kapnick, J.) would have annulled OCFS’ determination based on record contradictions about whether the child was in harm’s way that day, as well as petitioner’s extensive history of domestic violence at the hands of the father. The dissent stressed that under *Nicholson v Scopetta* (2 NY2d 357 [2004]), the minimum degree of care

standard must consider the parent’s individual circumstances at the time, placing petitioner’s choice to go along with the father’s wishes on the day in question in a different light and raising concern that she was effectively being penalized for her status as a longtime survivor of domestic violence. (Supreme Ct, New York Co)

People v Darbasie, 246 AD3d 524 (1st Dept 2/17/2026)
**INTIMIDATING A VICTIM OR WITNESS
 TAMPERING WITH A WITNESS**

LASJRP: The First Department finds the evidence legally sufficient to establish defendant’s guilt of intimidating a victim or witness in the third degree and tampering with a witness in the third degree where defendant created a new social media account under a false name, composed numerous implicitly threatening social media posts containing misleading and inflammatory edited excerpts of police interviews with the witnesses, characterizing the witnesses as “pigs,” “rats” and “snitches,” encouraging other users to spread the videos and share the posts, and tagging individuals mentioned by the witnesses; two of the witnesses promptly reported the posts to police, alleging that someone they knew was “harassing and threatening them” online; and even after the witnesses were subjected to vandalism and harassment, and defendant was informed that his posts had potentially “spooked” the witnesses, defendant declined to remove the posts and continued posting about the witnesses’ cooperation with police. (Supreme Ct, New York Co)

Matter of F.S.W., 246 AD3d 550 (1st Dept 2/17/2026)
TERMINATION OF PARENTAL RIGHTS - Appeal/Preservation

LASJRP: In this termination of parental rights proceeding, the First Department concludes that the mother’s contention that the attorney for the child improperly substituted her judgment for the child’s wishes is not preserved because the mother failed to make a motion to remove the attorney for the child. (Family Ct, Bronx Co)

People v Moore, 246 AD3d 528 (1st Dept 2/17/2026)
**ERLINGER | PREDICATE FELONY SENTENCING |
 PROSECUTION APPEAL | PRESERVATION | AFFIRMED |
 DISSENT**

ILSAPP: The prosecution appealed from a New York County Supreme Court judgment determining that appellant could not be sentenced as a persistent violent felony offender. The First Department affirmed. The prosecution failed to preserve the *Erlinger* issue where they did not argue that “*Erlinger*’s holding was inapplicable to the instant case” and did not object “when the court confirmed that they were not arguing the *Erlinger* issue.” While the prosecution’s request that a jury be empaneled to determine tolling “alerted the court to the existence of the *Erlinger* issue and set forth the reasoning supporting the view that *Erlinger* is inapplicable,” the prosecution “expressly declin[ed] to argue that *Erlinger* did not

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apply.” The trial court “did not rule on the *Erlinger* issue” where it accepted the prosecution’s argument to sentence appellant as a second violent felony offender in lieu of empaneling a jury to make a tolling determination. The trial court did not have inherent authority to empanel a jury to determine the tolling issue. A court’s discretion to exercise such authority “is limited to devising new procedures in ‘unusual circumstances’ and ‘exceptional cases,’ which [did] not exist here.” The dissent, (Friedman, J.) would have reached the merits of the prosecution’s argument and rejected appellant’s argument that *Erlinger* prohibits the sentencing court from making a tolling determination. In the dissent’s view, the prosecution “unquestionably took the position” that appellant should be sentenced as a persistent violent felony offender and brought the issue to the court’s attention. Office of the Appellate Defender (Samuel Steinbock-Pratt, of counsel) represented Moore. (Supreme Ct, New York Co)

Matter of A.M.G., 246 AD3d 562 (1st Dept 2/19/2026)

The First Department upholds findings of abuse and derivative abuse and neglect, noting, inter alia, that the daughter’s medical records indicating that she tested positive for chlamydia established a prima facie case of abuse and created a rebuttable presumption that the mother was responsible, even if the evidence was insufficient to demonstrate she committed or had actual knowledge of the abuse. The mother’s conduct in abusing or allowing the sexual abuse of her daughter supports findings of derivative abuse and neglect as to her son, even though he was unaware of the abuse.

**People v Anonymous, 246 AD3d 573 (1st Dept 2/19/2026)
CPL § 440.10 | IAC | RIGHT TO COUNSEL AT PROFFER |
REVERSED**

ILSAPP: Appellant appealed from a New York County Supreme Court order denying, inter alia, his CPL § 440.10 motion and from the judgment convicting him, at a bench trial, of second-degree burglary (three counts) and sentencing him, as a persistent violent felony offender, to 16-years-to-life in prison. The First Department reversed and granted a new trial. Supreme Court erred when it ruled that appellant had not proven he had been denied the effective assistance of counsel after his attorney left mid-way through a proffer session. Absent an express waiver by appellant, counsel had an affirmative obligation to attend the proffer to guard against the possibility that appellant’s attempt to cooperate “would hurt rather than help.” There was no objectively reasonable basis for counsel to absent himself, and by doing so he denied appellant meaningful representation at a critical stage of the proceedings. Appellant was prejudiced where he made inculpatory statements during the proffer which were used to impeach his testimony at trial.

Center for Appellate Litigation (Alexandra L. Mitter, of counsel) represented Anonymous. (Supreme Ct, New York Co)

Matter of D.B. v S.P., 246 AD3d 556 (1st Dept 2/19/2026)

The First Department upholds the Family Court’s denial of the father’s enforcement petition. The father failed to establish that there was a lawful court order in effect with a clear and unequivocal mandate, where the order stated that the father “may have additional visitation with the child in New York, from Friday at 6:00 p.m. until Sunday at 6:00 p.m., upon 2 weeks’ notice to the mother in writing.” The order was permissive, not mandatory, and the mother did not willfully violate the order by apparently refusing to facilitate visitation. The Family Court also properly designated new visitation exchange locations, and the parties’ arguments opposing the order reflect that their primary concern is their own convenience, rather than the child’s best interests. (Family Ct, Bronx Co)

**People v Nieves, 246 AD3d 571 (1st Dept 2/19/2026)
UNCHARGED CRIMES EVIDENCE - Prejudice/Prior Sex Crime**

LASJRP: In this child sex abuse prosecution, the First Department finds error where the trial court permitted the complainant to testify about an alleged prior oral sexual encounter with defendant. Even if the People established some non-propensity basis for introducing this evidence, the prejudicial nature of that evidence far outweighed any probative value, and the court’s limiting instructions did not cure the prejudice of admitting testimony about a past sex crime with little or no legitimate relevance to a non-propensity purpose. (Supreme Ct, New York Co)

**People v R.R., 246 AD3d 583 (1st Dept 2/19/2026)
YO | RUDOLPH ERROR | SENTENCE VACATED & REMITTED**

ILSAPP: Appellant appealed from a Bronx County Supreme Court judgment convicting him, following his guilty pleas under separate indictments, of second-degree attempted robbery and possession of prison contraband, and sentencing him to an aggregate term of 3 years’ imprisonment. The First Department modified by vacating the attempted robbery sentence, remitting for a youthful offender determination on that count, and otherwise affirmed. As the prosecution conceded, appellant “was entitled to be resentenced on the attempted robbery conviction with an express youthful offender determination.” The Legal Aid Society of NYC (Elizabeth Batkin, of counsel) represented [the appellant]. (Supreme Ct, Bronx Co)

**Matter of Shelby C.V. v Joshua W.K., 246 AD3d 606
(1st Dept 2/19/2026)****CUSTODY | UCCJEA | NY COURT MUST CONTACT OUT OF
STATE COURT | REVERSED & REMITTED**

ILSAPP: Appellant appealed from a New York County Family Court order dismissing her custody petition on the basis that

First Department *continued*

New York lacked jurisdiction. The First Department reversed and remitted for further proceedings. After learning of a pending custody proceeding in Ohio, Family Court was required to attempt to communicate with the Ohio court, but the record did not reflect that this occurred. Family Court also failed to comply with the statutory requirement to consider whether temporary emergency jurisdiction was necessary to protect the mother and child based on allegations of domestic violence. Geoffrey P. Berman represented Shelby C.V. (Family Ct, New York Co)

People v T.D., 246 AD3d 588 (1st Dept 2/19/2026)**EXCESSIVE SENTENCE | ARSON |****MENTAL HEALTH & CAPACITY | MODIFIED**

ILSAPP: Appellant appealed from a New York County Supreme Court judgment convicting her, following her guilty plea, of second-degree arson and sentencing her to 8 years' imprisonment plus 5 years' PRS. The First Department reduced the prison term to 5 years. Although the plea court did not abuse its discretion, and "giving due consideration to the seriousness of [the] offense," the Appellate Division found that "further incarceration would be unduly harsh" due to appellant's "significant mental health issues and moderate intellectual disability." Appellant set her bed on fire and quickly left her apartment, which caused "significant damage." Diagnosed with "unspecified schizophrenia and other psychotic disorder," appellant was initially found unfit to proceed. Once appellant was determined to be fit, a mental health counselor recommended residential placement to continue her psychiatric care. After appellant refused to plead not guilty by reason of insanity, the prosecution offered a 10-year prison sentence. Supreme Court then offered to impose an 8-year sentence and appellant accepted that offer. The First Department reduced despite appellant's criminal history and the "seriousness" of this crime. The dissent (Friedman, J.) would have affirmed, because appellant accepted the plea court's offer with the advice of counsel and was "extended a significant measure of leniency" considering the crime's seriousness and the strength of the prosecution's proof. The Legal Aid Society of NYC (Jonathan R. McCoy, of counsel) represented T.D. (Supreme Ct, New York Co)

People v Cruz, 246 AD3d 639 (1st Dept 2/24/2026)**INVALID APPEAL WAIVER | SUGGESTION THAT APPELLATE RIGHTS CONDITIONED ON TRIAL | AFFIRMED**

ILSAPP: Appellant appealed from a New York County Supreme Court judgment (Swern, J.) convicting him, following his guilty plea, of third-degree robbery and fourth-degree grand larceny and sentencing him to an aggregate term of 3 ½ to 7 years' imprisonment. The First Department affirmed but found the appeal waiver invalid. The plea court improperly suggested that

the right to appeal "was conditioned on going to trial." The "detailed" written waiver executed with counsel could not save the court's improper oral colloquy. But the court found no basis for reducing the sentence. The Legal Aid Society of NYC (Xhesi Hysi, of counsel) represented Cruz. (Supreme Ct, New York Co)

People v Green, 246 AD3d 636 (1st Dept 2/24/2026)**ASSAULT - Serious Physical Injury**

LASJRP: The First Department upholds defendant's first-degree assault conviction, concluding that the court properly declined to instruct the jury on the lesser included offense of assault in the second degree where the victim testified about the pain and physical limitations she suffered for months after the shooting, and her testimony was amply corroborated by the medical records. Nothing in the statute limits "protracted" impairments to those that are permanent or measured in years. Moreover, the victim continued to suffer weakness and a limited range of motion for about two years. (Supreme Ct, New York Co)

People v Lewis, 246 AD3d 621 (1st Dept 2/24/2026)**SORA | NON-REGISTERABLE OFFENSE | CHILD****PORNOGRAPHY "MORPHED" IMAGES | DISSENT | VACATED**

ILSAPP: Appellant appealed from a Bronx County Supreme Court order designating him a level one sex offender under SORA. The First Department reversed and vacated the order. Appellant superimposed images of his 16-year-old cousin's face onto adult bodies engaged in sexual conduct, resulting in appellant's conviction under 18 USC § 1466A(a)(1)(A) proscribing distribution of "morphed" child pornography. But this conduct did not give rise to criminal liability under the analogous New York statute, PL § 263.15, in effect at the time of appellant's conviction. The New York statute criminalized pornography that resulted from a "performance by a child." While the New York statute was subsequently amended to penalize visual depictions created to make it appear that identifiable minors were engaging in sexual conduct, that amendment went into effect more than 6 years after appellant's conviction. The pre-amendment statute did "not cover morphed images at all, regardless of the body parts" depicted. The dissent (Pitt-Burke, J.) interpreted the word "simulated" in pre-amendment P.L. § 263.15 as covering appellant's conduct, arguing that "when the statute [was] read as a whole, rather than piecemeal" images created that depicted a minor engaging in sexual conduct were "clearly penalized." The Legal Aid Society of NYC (Hilary Dowling, of counsel) represented Lewis.

Matter of Cynque T., 2026 NY Slip Op 01147**(1st Dept 2/26/2026)****JUVENILE DELINQUENCY | WEIGHT OF EVIDENCE | MODIFIED**

ILSAPP: Appellant appealed from a Bronx County Family Court order adjudicating him a juvenile delinquent after finding that

First Department *continued*

he committed acts which, if committed by an adult, would constitute two counts of second-degree assault and two counts of third-degree assault and placing him in a nonsecure placement for 12 months. The First Department modified by vacating the second-degree assault findings as against the weight of the evidence. When probation officers were injured trying to break up a fight between appellant and another boy, appellant lacked the required intent to prevent probation officers from performing a lawful duty. Rather, the boys were “singularly focused on each other until the fight’s conclusion.” Because the evidence of intent was purely circumstantial, the appellate court must be satisfied that the evidence excluded every reasonable hypothesis of innocence beyond a reasonable doubt. The presentment agency failed to meet that burden here, requiring vacatur of the second-degree assault findings. The court affirmed the third-degree assault findings, which required only a reckless state of mind. The Legal Aid Society of NYC (John A. Newbury and Eileen Malunowicz, of counsel) represented Cynque T. (Family Ct, Bronx Co)

People v Gardner, 246 AD3d 667 (1st Dept 2/26/2026)
INVALID APPEAL WAIVER | “SEPARATE & DISTINCT” NOT EXPLAINED | COUNSEL’S WAIVER ADVICE ALONE INSUFFICIENT | SURCHARGES & FEES | MODIFIED & FEES VACATED

ILSAPP: Appellant appealed from a Bronx County Supreme Court judgment (Mitchell, J.), convicting him, following his guilty plea, of second-degree attempted robbery and sentencing him to 6 months’ incarceration plus 5 years’ probation. The First Department modified by vacating the surcharge and fees. The appeal waiver was invalid because the plea court never explained the rights appellant was waiving or that “the right to appeal was separate and distinct.” Instead, the court relied on counsel’s representation that they had told appellant about the waiver, which could not substitute for the court conducting its own inquiry. The written waiver also could not substitute “for an on-the-record explanation of the nature of the right to appeal.” Center for Appellate Litigation (Benjamin G. Wiener, of counsel) represented Gardner. (Supreme Ct, Bronx Co)

Matter of L.K., 246 AD3d 660 (1st Dept 2/26/2026)

The First Department upholds a finding of neglect based on evidence that the mother’s mental illness interfered with her judgment and parenting abilities and placed the child at imminent risk of impairment, where the child was under one year old and totally dependent on her. The mother experiences paranoia, delusions, and psychotic behavior, yet believed she did not need psychiatric care and stopped taking her prescribed medication. The Family Court did not err when it considered the mother’s post-petition hospitalization insofar as it relates to her

mental health history and failure to follow through with necessary treatment prior to the filing of the petition.

Matter of Luisanny A. v Jonathan C., 246 AD3d 651
(1st Dept 2/26/2026)

CUSTODY - Change In Circumstances
- Res Judicata

LASJRP: The First Department upholds the Family Court’s dismissal of the petition, as the mother failed to show a material change in circumstances warranting modification of the prior order awarding residential custody to the father.

Although the mother testified that she moved to a larger apartment and undertook the care of her two younger children, she did not testify regarding the nature of the subject child’s relationship with the half siblings.

Noting that child custody and parental access orders are not entitled to res judicata effect and are subject to modification based on a showing of changed circumstances, the Court deletes a provision stating that dismissal is “with prejudice.”

The JRP appeals attorney was Diane Pazar. (Family Ct, Bronx Co)

People v Marin, 246 AD3d 669 (1st Dept 2/26/2026)
INVALID APPEAL WAIVER |

RIGHTS NOT ACCURATELY EXPLAINED | SURCHARGES & FEES | MODIFIED & FEES VACATED

ILSAPP: Appellant appealed from a Bronx County Supreme Court judgment (Iacovetta, J.), convicting him, following his guilty plea, of second-degree attempted burglary and sentencing him to 3 years’ imprisonment. The First Department modified by vacating the surcharge and fees, on consent of the prosecution. Under the totality of the circumstances appellant’s appeal waiver was invalid. The plea court’s colloquy failed to explain the claims that would survive a waiver and incorrectly “informed him that if it found that he violated the term of the plea, such a finding could not be appealed.” But the sentencing court properly exercised its discretion in denying appellant youthful offender treatment. Center of Appellate Litigation (Cathy Liu, of counsel) represented Marin. (Supreme Ct, Bronx Co)

People v Peguero, 246 AD3d 668 (1st Dept 2/26/2026)
APPEAL - Waiver Of Right

LASJRP: Defendant argues that his weapon possession conviction must be vacated as violative of his Second Amendment rights because he was convicted under a facially unconstitutional gun licensing scheme and because the seven months between his submission of an application for a gun license and his arrest constituted an unconstitutionally long delay.

The First Department rejects defendant’s arguments on the merits, and also notes that defendant’s facial challenge survives his voluntary waiver of the right to appeal and he had standing to assert it on appeal regardless of whether he sought

Second Department *continued*

to obtain a gun license, but his as-applied challenge to the licensing statute does not survive his valid appeal waiver. (Supreme Ct, Bronx Co)

People v Thompson, 246 AD3d 671 (1st Dept 2/26/2026)**SENTENCE | HARSH & EXCESSIVE | ROBBERY | MODIFIED**

ILSAPP: Appellant appealed from a New York County Supreme Court judgment convicting him of first-degree robbery and sentencing him to 9 years' imprisonment. The First Department reduced the sentence to 8 years' imprisonment. The Legal Aid Society of NYC (Elizabeth Batkin, of counsel) represented Thompson. (Supreme Ct, New York Co)

**Matter of Sheltering Arms Children's Services v Yiweiz,
246 AD3d 677 (1st Dept 2/26/2026)****TERMINATION OF PARENTAL RIGHTS - Witnesses/Leading Questions**

LASJRP: In this termination of parental rights proceeding, the First Department grants leave to appeal and upholds an order that determined that respondent mother's counsel was precluded from asking leading questions in his cross-examination of the mother, whom petitioner agency called as a witness on its direct case.

Trial courts have well-established and broad authority to control courtroom proceedings, including witness examination. When an adverse party is called as a witness during the other party's case in chief, the court may permit the use of leading questions upon a showing of hostility, adversity, evasiveness or uncooperativeness. Here, although the agency called the mother as an adverse witness and was permitted to ask leading questions, the mother's counsel made no showing that the mother would be hostile, evasive, or biased with her own counsel. Thus, the rationale underlying the use of leading questions was entirely absent during counsel's examination of his own client. Further, counsel was free to call the mother on her direct case.

The JRP appeals attorney was Claire Merline, and the trial attorney was Peter Hart. (Family Ct, New York Co)

Matter of An.D., 247 AD3d 404 (1st Dept 3/3/2026)**ABUSE/NEGLECT - Petition/Amendment**

- Educational Neglect/Derivative Neglect
- Inadequate Shelter/Clothing/Medical Care
- Corroboration

LASJRP: The First Department upholds findings of educational neglect and derivative neglect, noting, inter alia, that the Family Court did not err in sua sponte conforming the pleadings to the proof where the father's counsel received the certified school records before the father completed his direct case; and that the father's educational neglect of three of the children demon-

strated a fundamental defect in his understanding of his parental duties sufficient to support a finding of derivative neglect with respect to the three other school-aged children.

The Court also notes, inter alia, that the conditions in the home were unsanitary; that one child suffered from genital pain, and the child's genital region tested positive for dysuria; that three of the children had multiple lice nits in their hair, and one child complained of mouth pain and had mouth sores; and that one child's out-of-court statement that the child was not going to school because the child lacked clean clothing or sneakers was corroborated by the ACS caseworker's observation that while inspecting the father's home, she and her coworker were unable to find any clean clothing for the children to wear, and some of the children "had bad body odor."

The JRP appeals attorney was Susan Clement, and the trial attorney was Rebecca Ivry. (Family Ct, Bronx Co)

**Matter of L.S., 247 AD3d 423 (1st Dept 3/3/2026)
DISPOSITION/MOTION TO VACATE - Substantial Change Of
Circumstances
EXPUNGMENT OF RECORDS**

LASJRP: The First Department affirms an order which denied respondent's motion to vacate her prior adjudication as a juvenile delinquent and to seal and expunge the records of that adjudication. The Family Court properly determined that respondent failed to establish a substantial change of circumstances under FCA § 355.1(1)(b). In support of her motion, respondent submitted only a one-paragraph letter stating that she and her family had completed family therapy. Also, respondent's attack on the victim was "particularly violent."

The Family Court did not err in declining to expunge police, probation and presentment agency records. The Family Court's inherent power to order the expungement of court records under FCA § 375.3 applies to its own records and does not extend to the records of executive agencies not normally subject to its direction, particularly those of the police.

The JRP appeals attorney was Hannah Kaplan, and the trial attorney was Heather Saslovsky. (Family Ct, New York Co)

**A.L. v A.M., 247 AD3d 428 (1st Dept 3/5/2026)
CUSTODY MODIFICATION | CHANGE OF CIRCUMSTANCES |
HEARING REQUIRED | REVERSED & REMITTED**

ILSAPP: Appellant appealed from a New York County Supreme Court order summarily denying her motion seeking to modify an earlier separation agreement by granting her sole legal and physical custody. The First Department reversed and remitted for a best interests hearing. The parties' relationship had deteriorated since the divorce to the extent that they could no longer communicate productively regarding the children. The First Department found that continued joint custody would "effectively consign[] the family to perpetual litigation . . . which [was] likely to exacerbate parental conflict and place the

First Department *continued*

children in a constant state of uncertainty and anxiety.” Because of disputed facts and the lack of a comprehensive record, the court remitted for an evidentiary hearing on whether modifying custody would be in the best interests of the children. The Law Office of Neena Tankha PLLC (Lisa J. Trazzera, of counsel) represented appellant A.M. (Supreme Ct, New York Co)

People v Graham, 247 AD3d 436 (1st Dept 3/5/2026)
INVALID APPEAL WAIVER | “SEPARATE & DISTINCT” NOT EXPLAINED | WRITTEN WAIVER ALONE INSUFFICIENT | SURCHARGES & FEES | MODIFIED

ILSAPP: Appellant appealed from a Bronx County Supreme Court judgment (Parker, J.) convicting her, upon a guilty plea, of fourth-degree attempted grand larceny and petit larceny and sentencing her to 5 years’ probation and a 1-year conditional discharge. The First Department modified by striking the condition of probation requiring appellant to pay \$375 for the surcharge and fees. The appeal waiver was invalid because the plea court never explained that “the right to appeal was separate and distinct” from those rights waived by pleading guilty or that appellant would ordinarily retain the right to appeal even after pleading guilty. While the written waiver appellant signed accurately and thoroughly explained the appellate rights being waived, the record did not establish that appellant read and understood the waiver. While the First Department perceived no basis to reduce the sentence, it struck the condition of probation requiring payment of the surcharge and fees as not being reasonably related to appellant’s rehabilitation or helpful to her leading a law-abiding life. Center for Appellate Litigation (Abigail Everett, of counsel) represented Graham. (Supreme Ct, Bronx Co)

People v Irving, 247 AD3d 480 (1st Dept 3/10/2026)
IDENTIFICATION - Lineups/Suggestiveness

LASJRP: The First Department finds a lineup unduly suggestive where, of the five men in the lineup which took place within hours of the incidents, defendant was the only one visibly wearing a red shirt, a detail prominently featured in the victims’ description of the perpetrator.

While the police selected four fillers to match the description of the perpetrator provided by the victims and attempted to obscure their clothing by covering them with garbage bags, the red shirt worn by defendant was still clearly visible. The fact that one of the victims did not make a positive identification does not change the result. (Supreme Ct, New York Co)

People v Jones, 247 AD3d 482 (1st Dept 3/10/2026)
SENTENCE - Probation/Conditions

LASJRP: The First Department strikes a probation condition

which requires defendant to “[r]efrain from using cannabis and concentrated cannabis” where nothing in the record demonstrates that abstaining from marijuana is reasonably related to defendant’s crime of attempted gun possession. Defendant stopped using marijuana in 2022 and was not under the influence of marijuana when he possessed the gun. (Supreme Ct, Bronx Co)

Matter of J.S., 247 AD3d 483 (1st Dept 3/10/2026)
ABUSE/NEGLECT - Medical/Derivative Neglect - Hearsay Evidence/ACS Records

LASJRP: The First Department upholds findings of medical neglect and derivative neglect, noting, inter alia, that the mother refused to allow the child emergency medical treatment, and then failed to answer subsequent telephone calls from hospital staff for about two hours despite being aware that there was a blockage in the child’s lungs and that he was coughing up blood, having difficulty breathing, and might need surgery.

The court did not err in admitting petitioner’s progress notes and oral report transmittals into evidence under the business records exception to the hearsay rule based on testimony from petitioner’s supervisor assigned to the family who was familiar with petitioner’s record-keeping practices.

The JRP appeals attorney was Judith Stern, and the trial attorney was Holly Graham. (Family Ct, Bronx Co)

People v Lezama, 247 AD3d 474 (1st Dept 3/10/2026)
SORA | IMPROPER POINTS ASSESSMENT: PRIOR CRIMINAL HISTORY | FACTOR 9 | REVERSED & REMITTED

ILSAPP: Appellant appealed from a Bronx County Supreme Court order adjudicating him a level three offender under SORA. The First Department reversed and remitted for a new SORA hearing. As the prosecution conceded, the SORA court improperly assessed 30 points under factor 9, prior criminal history, for a crime that had occurred nearly a year after the conviction underlying the SORA adjudication. “When assessing points under risk factor 9 for prior criminal history, the date of conviction or adjudication on the prior offense, not the date of the prior offense’s commission, is the relevant date.” Without the 30-point assessment, appellant’s points totaled 90, making him presumptively a level two offender. But because the SORA court did not consider whether an upward departure was warranted, the matter was remitted for a new hearing. The First Department rejected the prosecution’s argument that this SORA determination was barred by an earlier one in a different county adjudicating appellant a level three offender, finding the argument unpreserved and unavailing. The Legal Aid Society of NYC (Robin Richardson, of counsel) represented Lezama. (Supreme Ct, Bronx Co)

Matter of S.G., 247 AD3d 455 (1st Dept 3/10/2026)
ABUSE/NEGLECT - Excessive Corporal Punishment

LASJRP: The First Department concludes that the child’s

First Department *continued*

out-of-court statement that the mother hit the child, causing a bruise under the child's eye, was sufficiently corroborated by testimony from the ACS caseworker as to her own observations of the bruise, photographs depicting the bruise, and the mother's testimony that she would "flick" the children in the mouth when they cursed.

The JRP appeals attorney was John Newbery, and the trial attorney was Rebecca Ivry. (Family Ct, Bronx Co)

Matter of D.M.R., 247 AD3d 509 (1st Dept 3/12/2026)**ABUSE/NEGLECT - Motion To Re-Open Hearing**

LASJRP: In this excessive corporal punishment case, the First Department finds no error where the Family Court denied the mother's motion to reopen the fact-finding to permit her to present testimony rebutting the EMT's testimony. The mother's motion was filed after the Family Court had already issued its fact-finding order and was untimely, and the mother was aware that the attorney for the child planned to call an EMT as a witness and had the opportunity to cross-examine the EMT at the fact-finding hearing.

The JRP appeals attorney was Judith Stern, and the trial attorney was Jill O'Bryan. (Family Ct, Bronx Co)

People v Martin, 247 AD3d 508 (1st Dept 3/12/2026)**IDENTIFICATION | MOSELY ERROR | HARMLESS | AFFIRMED**

ILSAPP: Appellant appealed from a New York County Supreme Court judgment convicting him of first-degree attempted assault and second-degree CPW. The First Department affirmed but found that the trial court erred in allowing a police witness to identify appellant from surveillance footage. The officer, who had not known appellant before the arrest and had only observed him during his time in custody, lacked sufficient familiarity with appellant to "render his identification. . . helpful to the jury" (citing *People v Mosely* [41 NY3d 640, 648 (2024)]). Moreover, "[t]here was no testimony indicating that the quality of the surveillance video would have made it difficult to identify [appellant]." However, the First Department found the error harmless "in light of the overwhelming evidence of [appellant's] guilt." (Supreme Ct, New York Co)

People v A.Y., 247 AD3d 538 (1st Dept 3/17/2026)**SEARCH AND SEIZURE - Reasonable Suspicion**

LASJRP: The officer testified that while on plainclothes patrol with another officer, he observed defendant wearing a hooded sweatshirt on a hot summer night, with a weighted object in the pocket which defendant repeatedly adjusted. The officers followed defendant and his companion at a distance in an unmarked patrol car but did not approach or try to stop defendant. The officer knew that defendant walked from an

area known as the territory of the Bloods gang to a building known as a Crips hangout. Once there, defendant crouched behind a car to watch a group in front of that building, then crossed the street and reached into his pocket for the heavy object. The officers pulled up in front of defendant, identified themselves as police and told him to "hold up," believing that he was "about to do a shooting" and if they waited any longer, "it might be too late." In response, defendant immediately fled.

The First Department upholds the denial of suppression of the gun discarded by defendant, concluding that the officer's belief that defendant was about to start shooting was reasonable, and that defendant's flight further heightened the officer's suspicion. (Supreme Ct, Bronx Co)

People v Caruth, 247 AD3d 545 (1st Dept 3/17/2026)**SEARCH AND SEIZURE - Consent To Search - Emergency Exception**

LASJRP: After concluding that a search on the day the police were alerted to the missing victim was justified based on the emergency exception even in the absence of definitive knowledge that a crime had occurred, and that the victim's boyfriend, who also lived in the house, had apparent authority to consent, the First Department concludes that defendant provided "tacit" consent to search the next day where defendant accompanied the officers to the basement during the first search that day, and acquiesced when they returned that evening to reexamine a bag that had an unusual stain on it; and did not object to their presence, did not ask them to leave, was generally cooperative throughout, and was not under arrest or detained at the time. (Supreme Ct, Bronx Co)

People v Scott-Manson, 247 AD3d 543 (1st Dept 3/17/2026)**SENTENCE | PREDICATE FELONY STATEMENT | FAILURE TO ARRAIGN | MODIFIED & SENTENCE VACATED**

ILSAPP: Appellant appealed from a New York County Supreme Court judgment convicting him of first-degree attempted assault, second-degree assault and third-degree CPW and sentencing him, following a jury trial, as a second felony offender to an aggregate term of 6 years' imprisonment. The First Department modified by vacating appellant's sentence, remitting for resentencing and otherwise affirmed. The sentencing court inadvertently neglected to arraign appellant on the predicate felony statement. The prosecution agreed that the sentence had to be vacated, and the matter remitted for resentencing. The Legal Aid Society of NYC (Mary-Kathryn Smith, of counsel) represented Scott-Manson. (Supreme Ct, New York Co)

Matter of Z.R., 247 AD3d 546 (1st Dept 3/17/2026)**ABUSE/NEGLECT - Drug Misuse**

LASJRP: The First Department upholds a finding of neglect, noting, inter alia, that there was evidence of the newborn's positive toxicology; that the mother's addiction led to the child

First Department *continued*

having serious medical complications, which required a month-long stay in the NICU and ongoing treatment following discharge; and that the mother had a long-standing history of substance abuse - despite the prior removal of two older children under similar circumstances - that included admissions of drug use during pregnancy and postpartum, which demonstrated a lack of insight into the seriousness of her conduct and was inconsistent with her claim that she was actively seeking treatment for her substance abuse. (Family Ct, New York Co)

Matter of Ja.W., 247 AD3d 599 (1st Dept 3/19/2026)**ABUSE/NEGLECT - Mental Health Issues**

LASJRP: The First Department reverses an order finding that respondent neglected her three children, concluding that although the mother was diagnosed with anxiety and depression, the record does not establish a link or causal connection between the mother's diagnoses and any impairment or imminent danger of impairment to the children.

There was a burn on one of the children, but the injury was accidental. The mother was under the care of a psychiatrist and took prescribed medications. While the mother testified that she stopped taking one of her medications, she explained that she did so in accordance with her doctor's instructions because the medication had side effects. The mother's periodic gap in seeing a talk therapist did not render her noncompliant with recommended treatment, as she explained that she did not think she and her therapist were a "good fit," and nothing in the record suggests that consistent therapy was required.

Although the mother sought respite care because she was feeling overwhelmed, she testified that she was not afraid she would "do something" to hurt her children or herself. (Family Ct, Bronx Co)

People v Moore, 247 AD3d 585 (1st Dept 3/19/2026)**SEARCH AND SEIZURE - Reasonable Suspicion**

LASJRP: Police officers received a radio run providing a detailed description of two men in front of 3500 Park Avenue, and specifying that the man wearing a red hat, red jacket, red shirt, red pants, and Timberland boots had a gun. When the officers arrived at the location, within five minutes of the transmission, they saw two men matching the descriptions. As the officers approached, defendant, in red clothing, twice reached toward his pockets.

The First Department concludes that "in this rapidly unfolding situation," the anonymous tip that a man with defendant's distinctive red clothing had a gun was sufficiently reliable to provide reasonable suspicion and justified the officer's minimally intrusive act of impeding defendant's arm, after which he saw the gun in defendant's pocket. By preventing

defendant from reaching into his pocket, the officer took reasonable steps to protect his safety and the safety of his fellow officers and the public. (Supreme Ct, Bronx Co)

**People v Perry, 247 AD3d 588 (1st Dept 3/19/2026)
SUPPRESSION | SUGGESTIVE ID | NO PROBABLE CAUSE |
REVERSED & INDICTMENT DISMISSED**

ILSAPP: Appellant appealed from a New York County Supreme Court judgment convicting him of fourth-degree CPCS. The First Department reversed, granted suppression, and dismissed the indictment. The police were notified of a robbery involving a "skinny" Black male in his 30s or 40s, approximately 5'5"—a description that matched appellant. The report also described the suspect wearing a red bandana, black hooded sweatshirt, and black sweatpants. Appellant was found in the stairwell of the building where the robbery was reported wearing a red baseball hat, red face mask, red t-shirt, and blue shorts. During a search incident to arrest, the police recovered crack cocaine and marijuana. Prior to appellant's arrest, a witness who was too frightened to observe a show-up was asked to view a single picture of appellant taken by an officer at the scene. The First Department found that the witness' initial response—that appellant "looked like" the perpetrator but had changed his clothes—did not give officers reasonable belief that the witness made "a knowing identification...sufficient to support probable cause." The officers "appeared to have little faith in the identification" and immediately pursued corroboration from another witness. They then asked the same question "to the same suggestible witness." Appellant was not arrested until 15 minutes after the initial identification, after the witness was shown the photograph several times and repeatedly asked to definitively identify him. Under these circumstances, the identification was unduly suggestive and should have been suppressed, and the drugs recovered as a direct result should have also been suppressed. Center for Appellate Litigation (Jaqueline Shelton, of counsel) represented Perry. (Supreme Ct, New York Co)

People v Ascencio, 247 AD3d 615 (1st Dept 3/24/2026)**RIGHT TO COUNSEL - Effective Assistance/****Concessions By Counsel**

LASJRP: The First Department affirms an order denying defendant's motion to vacate the judgment of conviction, concluding that defense counsel did not concede her guilt at trial.

In the face of overwhelming evidence of defendant's conduct, counsel presented a consistent, reasonable defense to the third-degree stalking charges by arguing that defendant's conduct was not likely to cause the victim to reasonably fear physical injury, and, as to the second-degree burglary charges, by challenging the element of intent to commit a crime inside the building. Counsel also challenged the evidence that the victim had an objectively reasonable fear of physical injury and

First Department *continued*

thus did not concede that defendant was guilty of first-degree harassment.

Counsel's use of the terms "harassing" and "harassment" during summation constituted colloquial speech, as he urged the jury to conclude that defendant's acts were non-criminal, annoying, and bothersome conduct that distressed but did not physically threaten the victim. (Supreme Ct, New York Co)

**People v Dinkins, 2026 NY Slip Op 01742
(1st Dept 3/24/2026)**

**RIGHT TO COUNSEL - Effective Assistance/
Request For New Counsel**

LASJRP: The First Department, with one judge dissenting, vacates defendant's plea where, before the plea, the court summarily denied defendant's request for new counsel without giving him a fair opportunity to explain the basis for the request.

When defendant first asked to speak, the court ignored him altogether. When defendant made a second attempt, the court refused to permit him to address the issue and instead instructed him to "[t]alk to [his] lawyer." Defendant had to interrupt the proceeding on his third attempt to communicate his "need [for] a new attorney." The court failed to elicit, as is standard, whether defendant was satisfied with his attorney's performance before accepting the plea.

The Court rejects the People's contention that defendant forfeited his challenge because he did not raise his request for new counsel a fourth time at his plea proceeding, where the same judge presided. (Supreme Ct, New York Co)

**People v Espinoza, 247 AD3d 617 (1st Dept 3/24/2026)
DISCOVERY - Statements By Co-Defendant**

LASJRP: The First Department concludes that the People were not required by pre-amendment automatic discovery rules to disclose a form prepared in connection with a co-defendant's plea agreement, which stated that the co-defendant intended to invoke his Fifth Amendment privilege if called to testify at trial. The form did not relate to the subject matter of the case. (Supreme Ct, New York Co)

**Matter of L.X.V., 247 AD3d 628 (1st Dept 3/24/2026)
TERMINATION OF PARENTAL RIGHTS - Petition/Mandatory
Filing**

- Jurisdiction

LASJRP: The First Department concludes that the agency properly filed the permanent neglect petition against the father even though it was filed around three weeks after the beginning of a fact-finding hearing on the Article Ten abuse petition brought against him. The agency had been providing the child with foster care services for about thirty-seven months and was therefore required to file the permanent neglect petition because none of the exceptions set forth in Social Services Law

§ 384-b(3)(l) applied.

Dismissal of the abuse petition did not extinguish subject matter jurisdiction, as the father consented to the foster care placement and did not seek the child's return until after a permanent neglect finding was entered. (Family Ct, New York Co)

**Matter of Andrew C.B. v Allegra B.J., 247 AD3d 637
(1st Dept 3/26/2026)**

**FAMILY OFFENSE | FORMER DOMESTIC PARTNERS HAD
INTIMATE RELATIONSHIP | OUTBURST DURING ARGUMENT
NOT HARASSMENT 2ND | REVERSED**

ILSAPP: Appellant appealed from a New York County Family Court order finding that she committed the family offense of second-degree harassment. The First Department reversed, vacated the finding, and dismissed the petition. First, Family Court had jurisdiction over the matter: although the parties were not romantically involved at the time the petition was filed, because they had been former domestic partners, [they met] the statutory definition of "intimate relationship." There was insufficient proof, however, that a family offense was committed. The harassment allegations arose from a statement appellant made during an argument over who would have custody of the parties' dog[,] telling the complainant that she would go to "Philadelphia because that's where they sell guns and shoot him. Because that's the only way I'm going to get my...dog back." The court determined that this was not a genuine threat of physical harm, noting that the argument continued for another 10 to 20 minutes afterwards, without escalation or physical contact by appellant. The proof was thus legally insufficient to establish second-degree harassment. Schlacter & Associates (Jed R. Schlacter, of counsel) represented Allegra B.J. (Family Ct, New York Co)

**People v Goldfaden, 247 AD3d 656 (1st Dept 3/26/2026)
CPL § 440.20 | ERLINGER | RETROACTIVITY |
REVERSED & REMITTED**

ILSAPP: Appellant appealed from a New York County Supreme Court order summarily denying his CPL § 440.20 motion to set aside his sentence and from a judgment convicting him of second- and third-degree burglary and sentencing him to 16 years-to-life imprisonment as a persistent violent felony offender. The First Department reversed the denial of the CPL § 440.20 motion and held the appeal of the judgment in abeyance pending a determination of the motion. The motion court improperly denied appellant's motion solely by ruling that *Erlinger* did not apply retroactively. But appellant's conviction was not yet final when he filed his motion because he had not perfected his direct appeal. The prosecution's alternative grounds for opposing the motion were not decided by the motion court and could not serve as a basis for affirmance. Center for Appellate Litigation (Mark W. Zeno, of counsel) represented Goldfaden. (Supreme Ct, New York Co)

First Department *continued***People v Jones, 247 AD3d 656 (1st Dept 3/26/2026)****PROSECUTION APPEAL | CPL § 440.20 | “STRICT EQUIVALENCY” | REVERSED & SENTENCE REINSTATED**

ILSAPP: The prosecution appealed from a New York County Supreme Court order granting a CPL § 440.20 motion and invalidating the second felony offender sentence. The First Department reversed, vacated the resentence, and reinstated the original sentence. While the motion court properly applied precedent holding that in order to be found guilty of knowing possession, a person had to know the nature of the drugs possessed, the First Department overruled this precedent to now hold that the “nature” of the substance possessed under Penal Law §§ 220.39(1) and 220.16(1) required only knowing possession of a “narcotic drug” and “knowledge of the particular drug possessed is not required.” Applying this standard, the federal narcotics conviction underlying the second felony offender adjudication satisfied the “strict equivalency” test to qualify as a valid predicate felony. (Supreme Ct, New York Co)

Matter of Marie D. v Frantz T., 247 AD3d 644**(1st Dept 3/26/2026)****CUSTODY - Relocation**

LASJRP: The First Department affirms an order that permits the mother to relocate with the parties’ children to Madagascar, noting that the mother’s relocation was a requirement of her employment with the United Nations and that the move was undertaken in good faith; that the father had stopped paying child support in or around December 2021, was not contributing to the children’s education, and the mother was entirely supporting the children; and that the father has not sought to visit the children since November 2021, when they were living in New York and has refused to participate in visitation because the court required that it be supervised or therapeutic. (Family Ct, New York Co)

People v Whatts, 247 AD3d 684 (1st Dept 3/31/2026)**SUPPRESSION | DENIAL IMPROPER WHERE MAPP NOT ORDERED | HELD IN ABEYANCE & REMITTED**

ILSAPP: Appellant appealed from a New York County Supreme Court judgment convicting him, following a jury verdict, of second-degree murder (two counts), first-degree burglary (two counts), and related charges. The First Department held the appeal in abeyance and remitted for a *Mapp* hearing. Although appellant had requested a *Mapp* hearing in his omnibus motion, the court ordered hearings only on his *Payton*, *Huntley*, and *Dunaway* claims, without mentioning his *Mapp* request. At the suppression hearing, a detective testified that he obtained appellant’s property after appellant’s mother voluntarily sur-

rendered it. Appellant’s mother testified that neither she nor appellant had given the property to the police. At the close of the hearing, the defense objected to the failure to order a *Mapp* hearing. The suppression court addressed the substance of the *Mapp* issue and credited the police testimony that appellant’s mother had voluntarily surrendered the property. On appeal, the prosecution argued that the motion court had properly denied the request for a *Mapp* hearing because the factual averments were insufficient and, in any event, the record was sufficient for the suppression court to rule on the *Mapp* motion’s merits. The First Department rejected both arguments, as it “lacked jurisdiction to affirm the denial of [appellant’s] *Mapp* hearing” on the procedural grounds of the averment’s insufficiency where the motion court had not decided that issue, and the hearing record was insufficient for the suppression court to rule on the merits because the *Mapp* issues were not fully litigated at the hearing. Center for Appellate Litigation (Barbara Zolot, of counsel) represented Whatts. (Supreme Ct, New York Co)

Matter of A.D., 2026 NY Slip Op 02033 (1st Dept 4/2/2026)**ABUSE/NEGLECT - Domestic Violence/Derivative Neglect****- Respondent/Person Legally Responsible**

LASJRP: The First Department upholds findings of neglect and derivative neglect where respondent brandished a firearm and physically assaulted the mother in close proximity to two of the four subject children, and a determination that respondent was a person legally responsible for the two children during the relevant period where he was in a romantic relationship with their mother for a period of one and a half years and is the father of their half-sibling, and frequently stayed in the home with the mother and the children, provided for the family financially, and took the children to school and on family outings.

The JRP attorney was Polixene Petrakopoulos, and the trial attorney was Sherine Skariah. (Family Ct, New York Co)

People v Gonzalez, 2026 NY Slip Op 02047**(1st Dept 4/2/2026)****UNCHARGED CRIMES EVIDENCE - Probative Of Defendant’s Intent**

LASJRP: The First Department finds no error in the admission of evidence of two of defendant’s prior acts of sexual misconduct on the subway, which was relevant to establish defendant’s intent when he rubbed his unexposed groin against a woman’s buttocks in a crowded public area. (Supreme Ct, New York Co)

People v Martinez-Jaquez, 2026 NY Slip Op 02045**(1st Dept 4/2/2026)****SEARCH AND SEIZURE - Auto Stop/Reasonable Suspicion**

LASJRP: At approximately 12:30 a.m., the officers received a

First Department *continued*

radio transmission indicating that a black Toyota with Pennsylvania license plate JCS1537 had been carjacked, the car was being tracked in real time, and its current location was near West 165th Street and Amsterdam Avenue. The officers responded to that location and saw a man standing by the trunk of a black Toyota with his hands by his waist in an open-air parking lot. A parking lot attendant confirmed that a black Toyota with Pennsylvania license plate had recently entered the lot. The officers then saw the black Toyota trying to exit. An officer stopped the car by drawing his gun, putting his hand up, and telling the driver to stop. The officer noticed that the Toyota had no front plate, which was not required in Pennsylvania, and a parking receipt on the windshield for the same license plate number as the stolen vehicle. Defendant was arrested and searched and later admitted to taking two cars without their owners' permissions and was identified in a lineup.

The First Department orders suppression, noting that the officer's testimony failed to provide any information that would have corroborated the anonymous radio transmission, and that without information regarding the source or nature of the tip, the forcible stop was not justified by a reasonable suspicion.

The testimony that defendant was standing near the trunk of a black Toyota in a parking lot was not corroborative since such conduct was neither unlawful nor suspicious. The officer noticed the lack of the front license plate and the parking receipt after he had already forcibly stopped defendant. (Supreme Ct, New York Co)

Matter of Eliezer G., 2026 NY Slip Op 02060
(1st Dept 4/7/2026)

SEARCH AND SEIZURE - Reasonable Suspicion

LASJRP: Two public safety officers assigned to patrol an area because of a recent surge in firearms-related crimes noticed respondent's "hyperaware" demeanor, which included nervously looking up and down the street and furtively adjusting his jacket pocket. As the officers' vehicle passed respondent, they observed that he had a heavy, weighted bulge in his jacket pocket with a distinctive "rectangular" shape that they believed, based on their training, indicated the presence of a gun. When the officers turned the car around and approached, respondent immediately fled with his hand on the jacket pocket and made hand motions that suggested he was discarding an object.

The First Department concludes that the officers had reasonable suspicion justifying their pursuit of respondent and upholds the denial of suppression of respondent's abandoned firearm.

The JRP appeals attorney was John Newbery, and the trial attorney was Eileen Malunowicz. (Family Ct, Bronx Co)

People v Fisher, 2026 NY Slip Op 02077 (1st Dept 4/7/2026)
POSSESSION OF A WEAPON - Second Amendment

LASJRP: The First Department rejects defendant's Second Amendment challenges to the "good moral character" provision in New York's firearm licensing law, which defendant contends is "vague and discretionary," and to New York's lifetime firearms ban for any person previously convicted of a crime. (Supreme Ct, Bronx Co)

People v Key, 2026 NY Slip Op 02075 (1st Dept 4/7/2026)
EVIDENCE - Third-Party Culpability

LASJRP: The First Department rejects defendant's contention that the preclusion of evidence that would have supported a third-party culpability defense deprived him of his constitutional right to present a defense where, in an interview after the stabbing, the victim's sister informed the police that on the night of the stabbing, an unknown person knocked on her door and said that "Bronx Deuce" killed her brother, and the nickname belonged to the victim's best friend, who was seen on footage pulling the bleeding victim away from the fight.

Defendant offered the sister's testimony to support his claim that there had been a "rush to judgment" by the police. The court instructed the jury that the testimony was to be considered only to understand what the police did with the information and not for its truth. Given the lack of knowledge of the identity of the declarant or the source of the declarant's information, the statement lacked any indicia of reliability. (Supreme Ct, Bronx Co)

Matter of K.W., 2026 NY Slip Op 02081 (1st Dept 4/7/2026)
**ABUSE/NEGLECT - Failure To Supply Care/
 Leaving Child With Grandmother**

LASJRP: The First Department finds sufficient evidence of neglect where the father, inter alia, unexpectedly left the child with the maternal grandmother without shoes, extra clothing, or sufficient diapers and did not return to pick up the child.

The JRP appeals attorney was Daniel Abdul-Malak, and the trial attorney was Sandrine Valentine. (Family Ct, New York Co)

People v Davis, 2026 NY Slip Op 02161 (1st Dept 4/9/2026)
**SUPPRESSION | STANDING | OVERNIGHT GUEST | SWORN
 ALLEGATIONS SUFFICIENT | AFFIRMED**

ILSAPP: Appellant appealed from a New York County Supreme Court judgment convicting him of second-degree CPW. The First Department affirmed but found that "the suppression motion should not have been summarily denied based on lack of standing" where appellant asserted that he was [a]n overnight guest at the searched premises. The motion court's view that this allegation was "not credible" "had no bearing on whether [appellant] established a material factual dispute regarding standing," because the sworn allegations supported the grounds alleged. However, the motion court properly denied

First Department *continued*

suppression on the merits because the “protective sweep” of the apartment was justified. (Supreme Ct, New York Co)

People v Jones, 2026 NY Slip Op 02214 (1st Dept 4/14/2026)**ACCUSATORY INSTRUMENTS - Failure To Specify
Statutory Provision**

LASJRP: The First Department agrees with defendant that a third-degree possession of a weapon count was jurisdictionally defective and that the court should not have amended the indictment at the People’s request.

While the jurisdictional requirements of an indictment count are ordinarily met by an allegation that the defendant violated the terms of a specific statute designated by name and section, that rule does not apply where, as here, there are discrete subdivisions and no specific allegations regarding the subsection defendant allegedly violated. The amendment had the effect of curing a failure to charge or state an offense or the legal insufficiency of the factual allegations, which is prohibited. (Supreme Ct, New York Co)

Matter of N.G., 2026 NY Slip Op 02198 (1st Dept 4/14/2026)**NEGLECT | AGENCY APPEAL | SUSPENDED JUDGMENT |
REVERSED**

ILSAPP: The NYC Administration for Children’s Services appealed from a Bronx County Family Court order vacating a finding of neglect against a parent pursuant to a suspended judgment. The First Department reversed. When considering whether to grant a suspended judgment and vacate a finding of neglect, courts should consider four factors: “(1) the respondent’s prior child protective history; (2) the seriousness of respondent’s offense; (3) respondent’s remorse and acknowledgment of the abusive or neglectful nature of his or her act; and (4) respondent’s amenability to correction, including compliance with court orders.” Here, Family Court failed to adequately consider factors 2, 3, and 4. The parent’s testimony revealed that she failed to demonstrate remorse for the excessive corporal punishment underlying the neglect petition, and though she complied with court-ordered services, compliance alone without insight into her behavior was insufficient to warrant a suspended judgment. Family Court also failed to meaningfully address the child’s best interests in its order, instead focusing on broader policy concerns and the parent’s career advancement and reputation. The First Department vacated the suspended judgment, which was “at the very least...premature.” (Family Ct, Bronx Co)

**Matter of T.B.G., 2026 NY Slip Op 02197
(1st Dept 4/14/2026)****ABUSE/NEGLECT - Excessive Corporal Punishment/Risk Of
Emotional Impairment
- Hearsay Evidence**

LASJRP: The First Department upholds a neglect finding based

on excessive corporal punishment, noting, inter alia, that the Family Court properly admitted the child’s hospital records into evidence without striking the statements of the child’s school counselor and assistant principal, as those statements were relevant to the child’s diagnosis, treatment, and discharge plan; and that although the child was not physically injured, her emotional well-being was at imminent risk of impairment since the child became distressed and cried during the incident, and repeatedly stated that she did not wish to reside with the mother because she did not feel safe.

The JRP appeals attorney was Hannah Kaplan, and the trial attorney was Carolyn Weeks. (Family Ct, New York Co)

Matter of Z.T., 2026 NY Slip Op 02227 (1st Dept 4/14/2026)**JUVENILE DELINQUENCY | LESSER INCLUDED COUNTS |
MODIFIED**

ILSAPP: Appellant appealed from a New York County Family Court order finding that she committed acts that, if committed by an adult, would constitute the crimes of second-degree assault, attempted second-degree assault, third-degree assault, and attempted third-degree assault. The First Department modified by vacating all but the finding of second-degree assault and otherwise affirmed. As the presentment agency conceded, appellant was entitled to the dismissal of all lesser included counts of second-degree assault. Law Offices of Randall S. Carmel (Randall S. Carmel, of counsel) represented Z.T. (Family Ct, New York Co)

People v Sheard, 2026 NY Slip Op 02343**(1st Dept 4/16/2026)****PROSECUTION’S APPEAL | LEGAL SUFFICIENCY |
ATTEMPTED SEX TRAFFICKING | REVERSED**

ILSAPP: The prosecution appealed from a Bronx County Supreme Court order setting aside, as based on insufficient evidence, two counts of a guilty verdict convicting Sheard of attempted sex trafficking of a child and attempted second-degree promoting prostitution. The First Department reversed, reinstated those counts, and remitted for resentencing. The trial court improperly found the evidence legally insufficient. Sheard’s communications with the teenaged complainant after she left the sex trafficking operation “were aimed at restoring the same relationship that existed previously.” His actions came within “dangerous proximity to the criminal end” he sought to attain. (Supreme Ct, Bronx Co)

Matter of Jesus G., 2026 NY Slip Op 02371**(1st Dept 4/21/2026)****JUVENILE DELINQUENCY | RESTITUTION AWARD OUTSIDE
OF AGREEMENT | MODIFIED**

ILSAPP: Appellant appealed from a Bronx County Family Court order adjudicating him a juvenile delinquent after admission, placing him on probation for 15 months, and ordering him to

First Department *continued*

pay restitution of \$1,000. The First Department modified by vacating the restitution award and otherwise affirmed. The admission did not include any agreement to pay restitution. The charging document likewise contained no claim for restitution, and it was not until nearly two months after the admission that the presentment agency indicated it would seek restitution at disposition. The Legal Aid Society of NYC (Judith Stern, of counsel) represented Jesus G. Family Ct, Bronx Co)

People ex. rel. Boyle v Maginley-Liddie,
2026 NY Slip Op 02473 (1st Dept 4/23/2026)

**RIGHT TO COUNSEL | ARTICLE 78 | MANDAMUS GRANT
 PROPER | AFFIRMED**

ILSAPP: Petitioner initially brought a writ of habeas corpus on behalf of an incarcerated person, who was detained in Rose E. Singer Enhanced Supervision Housing Unit (RESH) on Rikers Island, alleging that the New York City Department of Corrections (DOC) violated his right to counsel. After the client was transferred out of RESH, petitioner converted the action into an Article 78 writ of mandamus, which was granted by New York County Supreme Court. The First Department affirmed, as petitioner established that DOC failed to perform its mandatory, nondiscretionary duty to protect the 6th Amendment right to counsel for RESH detainees. Supreme Court's order did not deprive DOC "of discretion in how it balances security concerns against its duty to preserve the right to counsel for detainees at RESH." And DOC's argument that "facilitating attorney access to the family waiting room during attorney visiting hours" would require expending resources was not "a legitimate penological concern." Nor was venue improper: the habeas writ was properly brought in New York County Supreme Court, and DOC failed to timely seek a change of venue to the Bronx once the writ was converted to an article 78. Finally, adjustments to RESH policies for legal visits during the pendency of the litigation did not render the matter moot, as evidence suggested RESH was continuing to "depriv[e] detainees of the same right to counsel...afforded at other Rikers facilities"; in any event, the "issues raised were likely to repeat, typically evade review, and present[ed] significant questions." New York County Defender Services (Dorothy Weldon, of counsel) represented petitioner. (Supreme Ct, New York Co)

People v Haggan, 2026 NY Slip Op 02462
 (1st Dept 4/23/2026)

**30.30 | PROSECUTION'S APPEAL | DUE DILLIGENCE
 DEMONSTRATED | REVERSED & REMITTED**

ILSAPP: The prosecution appealed from a New York County Supreme Court order dismissing the indictment on statutory speedy trial grounds. The First Department reversed, denied the defense's 30.30 motion, reinstated the indictment, and remit-

ted for further proceedings. The motion court erred in finding that the prosecution had not complied with its discovery obligations and that its COC was illusory. The prosecution was not required to disclose, as part of their automatic discovery obligations, the complainant's employment and medical records, which were not in its possession or control. While the prosecution was required to disclose the "victim's entity report" and improperly withheld it as duplicative, this omission did not invalidate the COC in light of the "voluminous records" disclosed and the "apparently innocuous nature" of the report. Also, the defense did not confer as required with the prosecution before moving to invalidate the COC. As the prosecution exercised "due diligence and good faith efforts," their COC was valid, and they were ready for trial within their statutorily allotted time. (Supreme Ct, New York Co)

People v J.P., 2026 NY Slip Op 02465 (1st Dept 4/23/2026)

**IAC | CIVIL COMMITMENT FOR MENTAL DISEASE OR
 DEFECT | REVERSED & REMITTED**

ILSAPP: Appellant appealed from a Bronx County Supreme Court order that found he suffered from a dangerous mental disorder and committed him to a psychiatric institution. The First Department reversed and remitted for a new hearing pursuant to CPL § 330.20(6), which governs the procedures "following a verdict or plea of not responsible by reason of mental disease or defect." Appellant "did not receive meaningful representation from his counsel," who "did no more than briefly offer his personal view" that J.P. "did not presently suffer from a dangerous mental disorder." Counsel "failed to challenge the examiner's reports" or "seek the examiner's testimony to allow for cross-examination." Nor did counsel seek additional expert testimony or present any other evidence. The record did not support that cross-examination or "other affirmative defense actions" "would have been futile." Mental Hygiene Legal Services (Jennifer M. deGroot, of counsel) represented J.P. (Supreme Ct, Bronx Co)

Matter of Natalie P. v Steven L.R., 2026 NY Slip Op 02458
 (1st Dept 4/23/2026)

**CUSTODY MODIFICATION | UCCJEA | LACK OF
 JURISDICTION TO MODIFY OUT-OF-STATE ORDER |
 REVERSED**

ILSAPP: Father appealed from a New York County Family Court order granting the mother's petition to modify an order of custody and visitation. The First Department reversed. Family Court lacked subject matter jurisdiction to modify the existing order, which was issued in Texas. The father continued to reside in Texas, giving the Texas court continuing jurisdiction, which it did not cede. Although the mother registered the Texas order in New York where she lived with the child, that only made it possible to enforce the order in New York courts and did not impact subject matter jurisdiction. Rather than mod-

First Department *continued*

ifying the order, the New York court could have contacted the Texas court to see whether it would relinquish jurisdiction over the matter. If it did not do so, Family Court in New York could then have determined whether it could take emergency jurisdiction and issue a time-limited order as necessary to protect the child. Law Office of Bryan Greenberg, LLC (Bryan Greenberg, of counsel) represented Steven L.R. (Family Ct, New York Co)

**Roberson-Fisch v Fisch, 2026 NY Slip Op 02476
(1st Dept 4/23/2026)****CONTEMPT | NO CLEAR AND UNEQUIVOCAL MANDATE OR
PREJUDICE | REVERSED**

ILSAPP: Appellant appealed from a New York County Supreme Court order finding her in contempt for failure to comply with a court order requiring her to pay funds into an escrow account to be held until the conclusion of divorce proceedings. The First Department reversed. Although the contempt had been purged, the adjudication carried potentially enduring consequences, rendering the appeal not moot. The court's order did not have a deadline for the transfer of funds, therefore failing to prove that appellant violated a "clear and unequivocal mandate" so as to be found in contempt. Additionally, the lower court did not make the required finding that the alleged violation prejudiced the other party or was calculated to do so. Mosberg Sharma Stambleck Gross LLP (Jonathan W. Wolfe, of counsel) represented appellant Laura Roberson-Fisch. (Supreme Ct, New York Co)

**Matter of V.B., 2026 NY Slip Op 02441 (1st Dept 4/23/2026)
ABUSE/NEGLECT - Petition/Amendment To
Conform To Proof
- Post-Filing Conduct**

LASJRP: The First Department dismisses an abuse charge but upholds a determination that the mother neglected the child where the father, who resided with the mother and the child, inflicted excessive corporal punishment on the child and subjected the child to sexual abuse, and the mother knew or should have known but failed to take any steps to protect the child.

The court did not err in conforming the pleadings to the proof and finding that the mother's act of threatening the child with a knife after the child was released to her custody was sufficient for a finding of neglect. While the incident occurred after the filing of the petition, the mother was on notice about it as it was the basis for the child's removal, and the mother was afforded a sufficient opportunity to defend against the allegations.

The JRP appeals attorney was Judith Stern, and the trial attorney was Caroline Okun. (Family Ct, Bronx Co)

Second Department

In the online version of the *REPORT*, the name of each case summarized is hyperlinked to the opinion provided on the website of the New York Official Reports, www.nycourts.gov/reporter/Decisions.htm.

**People v Brown, 245 AD3d 955 (2nd Dept 1/28/2026)
ERRONEOUS ORDER FOR INVESTIGATION & REPORT,
PSI & USC | AFFIRMED & REMITTED**

ILSAPP: Appellant appealed from a Kings County Supreme Court judgment convicting him, upon his guilty plea, of second-degree CPW. The Second Department remitted for an amended court order for investigation and report, amended presentence investigation report (PSI), and amended uniform sentence and commitment sheet (USC), and otherwise affirmed the convictions. As conceded by the prosecution, the court order for investigation and report, the PSI, and the USC included clerical errors. Specifically, all three cited to appellant's second-degree CPW conviction under the wrong subsection of the Penal Law; the court order for investigation incorrectly stated the date of appellant's offense; and the USC erroneously stated the counts on the charging instrument. Appellate Advocates (Victoria Broderick, of counsel) represented Brown. (Supreme Ct, Kings Co)

**People v Mitchell, 245 AD3d 961 (2nd Dept 1/28/2026)
DVSJA | PL § 60.12 | TEMPORAL NEXUS MET BY PTSD FROM
PRIOR ABUSE | INSUFFICIENT EVIDENCE THAT ABUSE WAS
SIGNIFICANT CONTRIBUTING FACTOR | AFFIRMED**

ILSAPP: Appellant appealed from a Kings County Supreme Court judgment convicting her, upon her guilty plea, of first-degree assault, denying her DVSJA relief at initial sentencing under PL § 60.12, following a hearing, and sentencing her to 6 years' imprisonment followed by 5 years' PRS. The Second Department affirmed. Reaching the merits of the DVSJA claim after the prosecution elected not to argue that the appeal waiver precluded review of the issue, the court initially agreed with the court below that appellant was a victim of domestic violence at the time of the offense because her "long-term domestic abuse manifested as post-traumatic stress disorder" (PTSD). Citing *People v Scott* (241 AD3d 1368 [2d Dept 2025]) (abuse "at the time of the offense" established by PTSD diagnosis), the Second Department reaffirmed their endorsement of the argument that ongoing PTSD from earlier abuse can satisfy the temporal nexus requirement of the DVSJA. However, the Second Department affirmed the lower court's denial based on prong two, finding that appellant's "history of abuse and PTSD" was not "a significant contributing factor to the assault," reasoning that the assault occurred against a third-party complainant, and appellant "was no longer in an abusive relationship and did not have any contact with her abuser." (Supreme Ct, Kings Co)

Second Department *continued*

People ex rel. Boksenbaum v Maginley-Liddie, 246 AD3d 684
(2nd Dept 2/2/2026)

**HABEAS | BAIL | PAROLE | PERSISTENT FELONY OFFENDER
 | SUSTAINED & REMITTED**

ILSAPP: Petitioner commenced a habeas petition in the Second Department requesting release on recognizance or non-monetary conditions. The Second Department sustained the petition to the extent that the matter was remitted to Queens County Supreme Court for further proceedings. Since petitioner was on parole, rather than probation or post-release supervision, CPL § 510.10(4)(r) did not apply, and the trial court “erred in concluding that he was charged with a bail-qualifying offense within the meaning of CPL § 510.10(4)(r).” The “plain language” of the statute renders a felony offense bail-qualifying when a person is also serving a term of probation or post-release supervision. Parole is excluded, as it is “an entirely separate category of release.” The court also held that since drug-related offenses do not qualify for persistent felony sentencing, CPL § 510.10(4)(s), which renders a felony offense bail-qualifying when a person qualifies for persistent felony offender sentencing, also could not serve as a theory on which bail could be set. The Legal Aid Society of NYC (Anna Boksenbaum, of counsel) represented Reid. (Supreme Ct, Queens Co)

People v Dickey, 246 AD3d 757 (2nd Dept 2/4/2026)
**OOP | JAIL TIME CREDIT | OOP DURATION VACATED &
 REMITTED**

ILSAPP: Appellant appealed from an Orange County Court judgment convicting him, upon his guilty plea, of second-degree assault and two[] counts of second-degree CPW. The Second Department affirmed the conviction but vacated the durational portions of appellant’s three OOPs and remitted. “The duration of the orders of protection issued at the time of sentencing exceeded the maximum time limit set forth in CPL 530.13(4), since they did not take into account [appellant’s] jail-time credit.” Preservation was not required, because appellant “had no practical ability to register a timely objection” given the court’s failure to announce the duration of the OOP at the plea or sentencing proceedings. Warren S. Hecht represented Dickey. (County Ct, Orange Co)

People v Dileo, 246 AD3d 758 (2nd Dept 2/4/2026)
ANDERS BRIEF | DEFICIENT | NEW COUNSEL ASSIGNED

ILSAPP: Appellant appealed from a Nassau County Court judgment revoking his probation and sentencing him to a term of imprisonment upon his previous conviction of fourth-degree attempted CPCS. Assigned counsel filed an *Anders* brief to withdraw. The Second Department found counsel’s brief deficient, granted leave to withdraw, and assigned new counsel.

Counsel failed to “adequately analyze potential appellate issues with reference to legal authority,” including whether appellant’s “admission that he violated conditions of his probation was knowingly, voluntarily, and intelligently entered, whether [he] waived his right to a revocation hearing, and whether the resentencing was excessive.” Further, the brief did not “contain an adequate statement of facts” or identify the probation conditions imposed upon appellant at sentencing. (County Ct, Nassau Co)

Fogg v Turo, Inc., 246 AD3d 705 (2nd Dept 2/4/2026)
**EVIDENTIARY ISSUES | AUTHENTICATION OF VIDEO
 EVIDENCE | AFFIRMED**

ILSAPP: Plaintiff appealed from a Kings County Supreme Court order granting respondent’s motion for summary judgment dismissing the complaint against her. The Second Department affirmed. In this personal injury action arising out of an automobile collision, the Supreme Court properly considered a video of the accident recorded by a doorbell camera. “A video recording ‘may be authenticated by the testimony of a witness to the recorded events . . . that the video [] accurately represents the subject matter depicted.’” Here, respondent “properly authenticated the video by attesting that it was unedited and fairly and accurately depicted the accident.” The video established that plaintiff caused the accident when he “negligently drove his vehicle into the intersection without yielding the right-of-way to respondent’s approaching vehicle” and accordingly, the Supreme Court properly granted respondent’s motion for summary judgment. (Supreme Ct, Kings Co)

People v Gardner, 246 AD3d 771 (2nd Dept 2/4/2026)
SORA | IMPROPER SVO DESIGNATION | MODIFIED

ILSAPP: Appellant appealed from a Suffolk County Court order designating him a level three sexually violent offender (SVO) under SORA. The Second Department modified by removing the SVO designation and otherwise affirmed. As conceded by the prosecution, appellant “should not have been designated a sexually violent offender.” Suffolk County Legal Aid Society (Genevieve M. Cahill, of counsel) represented Gardner. (County Ct, Suffolk Co)

People v Jackson, 246 AD3d 761 (2nd Dept 2/4/2026)
**MISSING WITNESS INFERENCE
 APPEAL - Preservation**

LASJRP: The Second Department, noting that the People cannot raise the issue of untimeliness of defendant’s request for a missing witness charge for the first time on appeal, finds no error where the trial court refused to issue such a charge regarding the sole outcry witness. Defendant failed to show that the uncalled witness would provide noncumulative testimony, and defense counsel was permitted to comment during summation on the People’s failure to call the witness. (County Ct, Westchester Co)

Second Department *continued***People v Kidwai, 246 AD3d 765 (2nd Dept 2/4/2026)****APPEAL - Waiver Of Right**

LASJRP: The Second Department holds that the record does not demonstrate that defendant knowingly, voluntarily, and intelligently waived his right to appeal where the court made its own sentence offer to defendant and required defendant to waive his right to appeal, but the court did not set forth any reason for demanding an appeal waiver, and none is apparent on the record. (County Ct, Suffolk Co)

People v Leon, 246 AD3d 766 (2nd Dept 2/4/2026)**OOP | DURATION EXCEEDED MAXIMUM | PRESERVATION NOT REQUIRED | OOP DURATION MODIFIED**

ILSAPP: Appellant appealed from a Queens County Supreme Court judgment convicting him, upon his guilty plea, of third-degree robbery. The Second Department affirmed the conviction but modified the OOP by reducing its duration. An expiration date 9 years from the date of sentencing exceeded the maximum time limit pursuant to CPL § 530.13(4)(A). Preservation was not required because appellant “had no practical ability to register a timely objection” given the court’s failure to announce the OOP’s duration at the plea or sentencing proceedings. Appellate Advocates (Angad Singh, of counsel) represented Leon. (Supreme Ct, Queens Co)

Matter of Zerina H., 246 AD3d 735 (2nd Dept 2/4/2026)**ARTICLE 10 | EXPERT TESTIMONY REBUTTED PRIMA FACIE SHAKEN BABY EVIDENCE | REVERSED**

ILSAPP: Mother appealed from a Kings County Family Court order finding that she abused and neglected her two-month-old child. The Second Department reversed, denied the petition, and dismissed the Article 10 proceeding against the mother, holding that the agency failed to demonstrate by a preponderance of the evidence that the mother abused and neglected the child. While the agency presented evidence of injuries “including subdural hematomas and a parenchymal hemorrhage that were of such nature as not to be accidental,” Family Court’s decision to credit the “less plausible” opinion of the agency’s expert over that of the mother’s expert was not supported by the record. The mother’s expert presented “sufficient evidence to rebut the [agency]’s prima facie case of abuse” by providing a “[r]easonable explanation for the child’s injuries” and explaining why they were inconsistent with shaken baby syndrome and not caused by the mother’s intentional actions. Moreover, “the record demonstrate[d] that the mother [was] a concerned parent who consistently sought medical attention for the child on multiple occasions . . . when the child displayed symptoms.” Brooklyn Defender Services (Amy Mulzer and Emma Clair Alpert, of counsel) represented respondent-appellant Tishana W. (Family Ct, Kings Co)

**Matter of Farco v Farco, 246 AD3d 799 (2nd Dept 2/11/2026)
CUSTODY MODIFICATION | PETITION DISMISSED WITHOUT A HEARING | IMPROVIDENT EXERCISE OF DISCRETION | REVERSED & REMITTED**

ILSAPP: Father appealed from a Nassau County Family Court order dismissing his custody modification petition without a hearing and *sua sponte* prohibiting him from filing any additional petitions relating to custody and parental access without prior written permission of the Family Court. The Second Department reversed, reinstated father’s petition, and remitted for a hearing and a new determination. Family Court improvidently exercised its discretion by enjoining the father from future filings without obtaining prior court approval, as “public policy generally mandates free access to the courts” and the record did not demonstrate that he “abuse[d] the judicial process by engaging in meritless litigation motivated by spite or ill will,” and his motion “to dismiss the mother’s cross-petition did not contradict his petition for modification.” Further, Family Court improperly dismissed father’s petition because his allegations that the mother’s mental health had deteriorated and that she had forfeited her parenting time established the threshold evidentiary showing of a change in circumstances and raised material issues of fact that required a full evidentiary hearing into whether a change of custody was in the child’s best interests. Appellant father represented himself. (Family Ct, Nassau Co)

People v Hall, 246 AD3d 840 (2nd Dept 2/11/2026)**SORA | IAC | SUA SPONTE ASSIGNMENT OF NEW APPELLATE COUNSEL**

ILSAPP: Appellant appealed from a Suffolk County Court order designating him a level three sex offender pursuant to SORA. The Second Department sua sponte assigned appellant new appellate counsel. Appellant was deprived of the effective assistance of counsel where “assigned counsel’s sole contention” was “based on a misconception of the record” (that the court improperly assessed 10 points under risk factor 12), and counsel “took no action to correct his mistake” despite the prosecution pointing out the error in its brief and counsel being directed to appear at oral argument. (County Ct, Suffolk Co)

**Kairey v Hirsch, 246 AD3d 792 (2nd Dept 2/11/2026)
DIVORCE | CONFIRMATION OF ARBITRATION AWARD | MODIFIED & REMITTED**

ILSAPP: Plaintiff appealed from a Kings County Supreme Court judgment of divorce, along with an order denying their motion pursuant to CPLR 7510 to confirm an arbitration award issued by the Bet Din Ohr Halacha (Bet Din). The Second Department reversed the judgment of divorce, granted plaintiff’s motion pursuant to CPLR 7510, and remitted for the entry of an amended judgment of divorce. Supreme Court lacked the authority to modify the portion of the arbitration award that

Second Department *continued*

determined the duration of child support, because it was “not incompatible with the objectives of the CSSA, and there [was] no evidence in the record that the arbitration award was not in the best interest of the child.” In this case, the parties had agreed to arbitrate certain marital issues before the Bet Din and were issued an arbitration award requiring defendant to pay child support until the child reached 24 years of age or married, but the Supreme Court subsequently modified the arbitration award to terminate child support when the child reached 21 years of age. The court “should have granted that branch of the plaintiff’s motion which was to confirm so much of the arbitration award as determined the duration of the defendant’s child support obligation.” Mishaan Dayon LLP (Saul A. Mishaan, of counsel) represented Kairey. (Supreme Ct, Kings Co)

Matter of James v Bailey, 246 AD3d 807
(2nd Dept 2/11/2026)

FAMILY OFFENSE | INSUFFICIENT EVIDENCE OF SECOND-DEGREE HARASSMENT | AFFIRMED

ILSAPP: Petitioner appealed from a Queens County Family Court order denying, after a hearing, her family offense petition and dismissing the proceeding. The Second Department affirmed. Petitioner failed to prove, by a fair preponderance of the evidence, that respondent committed the family offense of second-degree harassment. The credible evidence did not establish that respondent’s unspecified threatening statement was “a ‘true threat’ of intended physical harm” and that “respondent’s conduct during an incident in 2009 was committed with the requisite intent ‘to harass, annoy or alarm’ the petitioner.” (Family Ct, Queens Co)

People v Thompson, 246 AD3d 833 (2nd Dept 2/11/2026)
RIGHT TO COUNSEL - Effective Assistance/Decision-Making Authority

LASJRP: The Second Department concludes that the court should not have denied defendant’s motion to vacate the judgment of conviction without conducting a hearing where trial counsel’s representations that she advised defendant that a jury charge of manslaughter in the first degree as a lesser included offense should be requested, and informed the court that she would defer to defendant’s decision and did not request that charge, tended to substantiate defendant’s claim that trial counsel deprived defendant of the expert judgment of counsel to which he was constitutionally entitled.

While a defendant has the right to chart his or her own defense, matters of strategy and tactics, such as whether to request the submission of lesser-included offenses, generally fall within the purview of counsel. (County Ct, Westchester Co)

Matter of Viola J. v Baron A., 246 AD3d 804
(2nd Dept 2/11/2026)

CUSTODY - Grandparents/Extraordinary Circumstances

LASJRP: In August 2022, while a neglect proceeding was pending against the mother, the maternal grandmother commenced this custody proceeding, alleging that the mother was unfit and had persistently neglected the child. The child had been in the care and custody of the maternal grandmother since July 2021 after he was placed following an order of removal. In an order dated December 6, 2024, after a hearing, the court, inter alia, granted the grandmother’s petition for sole legal and physical custody of the child.

The Second Department affirms, concluding that the grandmother established the existence of extraordinary circumstances. The evidence established the mother’s persistent neglect based on her inability to control her temper, words, and actions in front of the child and her failure to abide by the supervising agency’s rules. The child had been in the grandmother’s custody for more than two years and the grandmother had been the child’s primary caregiver.

The JRP appeals attorney was Polixene Petrakopoulos, and the trial attorney was Daniel Tarek Abdul-Malak. (Family Ct, Kings Co)

People v Whittingham, 246 AD3d 837 (2nd Dept 2/11/2026)
CONSECUTIVE SENTENCES IMPROPER | GUILTY PLEA | MODIFIED

ILSAPP: Appellant appealed from three Kings County Supreme Court judgments convicting him, upon his guilty pleas, of third-degree robbery under one indictment, second-degree attempted assault and criminal possession of a firearm under the other indictment, and disorderly conduct under the Superior Court Information, and sentencing him, as a second felony offender, to indeterminate terms of 2 to 4 years on the attempted assault and criminal possession of a firearm convictions, to run consecutively to each other and the sentence imposed on the robbery conviction. The Second Department modified by directing that the sentences run concurrently with each other on the second-degree attempted assault and criminal possession of a firearm convictions and otherwise affirmed. As conceded by the prosecution, the trial court violated Penal Law § 70.25(2) by sentencing appellant to consecutive sentences because, “based upon the facts adduced during the plea colloquy,” the prosecution failed to establish that the second-degree attempted assault and criminal possession of a firearm counts were “separate and distinct” acts. Appellate Advocates (Alice R. B. Cullina, of counsel) represented Whittingham. (Supreme Ct, Kings Co)

Second Department *continued***People v Bassono, 246 AD3d 936 (2nd Dept 2/18/2026)****INVALID APPEAL WAIVER | POST-PLEA WAIVER |
SURCHARGES & FEES | MODIFIED & VACATED FEES**

ILSAPP: Appellant appealed from a Queens County Supreme Court judgment (Zoll, J.) convicting him, upon his guilty plea, of second-degree attempted CPW. The Second Department found the appeal waiver invalid, vacated the imposition of the mandatory surcharge and fees in the interest of justice, and otherwise affirmed. The appeal waiver was invalid, where the court did not discuss the waiver with appellant “until after [he] had already admitted his guilt as part of the plea agreement,” advised appellant “that he was not forfeiting his right to challenge whether or not the sentence was lawful but made no distinction between the legality and the excessiveness of the sentence,” and “failed to confirm that [appellant] understood the content of the written waiver or discussed the form with counsel.” CPL § 420.35(2-a) permits the waiver of surcharges and fees for individuals under 21 years old at the time of offense. Appellate Advocates (Anders Nelson, of counsel) represented Bassono. (Supreme Ct, Queens Co)

People v Davis, 246 AD3d 937 (2nd Dept 2/18/2026)

On the court’s own motion a prior decision (*People v Davis*, 246 AD3d 937 [2/11/2026]) is recalled and vacated, and replaced with this one.

A motion for leave to withdraw as counsel, made under *Anders v California* (386 US 738 [1967]), is granted and new counsel assigned. The *Anders* brief “fails to adequately analyze potential appellate issues or highlight facts in the record that might arguably support the appeal” [Citation omitted.] “Moreover, upon our independent review of the record, we agree with the People that nonfrivolous issues exist, including, but not necessarily limited to, whether the defendant validly waived his right to counsel, whether the court denied the defendant his right to make a statement at sentencing, and whether the sentence imposed was excessive” [Citation omitted.]

Matter of Destinee A., 246 AD3d 908 (2nd Dept 2/18/2026)**KINSHIP GUARDIANSHIP | PARENTAL ACCESS | IMPROPER
DELEGATION OF AUTHORITY | MODIFIED & REMITTED**

ILSAPP: Father and mother separately appealed from three Kings County Family Court orders, issued after a hearing, granting maternal grandfather and his wife’s Article 6 petitions to be appointed kinship guardians of the subject children; denying both father’s and mother’s court-ordered parental access unless consented to by the children; and granting mother a parental access schedule with the third child. The Second Department modified by deleting the provisions conditioning the parent’s informal parental access with two of

the subject children upon those children’s consent, remitted for a determination as to the parenting time schedule, and otherwise affirmed. The Court held that “Family Court improperly delegated its authority to determine the father’s and the mother’s parental access with [two of the subject children] to those children,” rather than crafting a parental access schedule that considered the best interests of those children. Fariah Amin represented Jacquelyn M.; Jill M. Zuccardy represented Adam A. (Family Ct, Kings Co)

People v Grant, 2026 NY Slip Op 00910**(2nd Dept 2/18/2026)****PROSECUTION’S APPEAL | CONSTITUTIONAL SPEEDY
TRIAL | EXTRAORDINARY DELAY | DNA TESTING |
REVERSED & REINSTATED**

ILSAPP: The prosecution appealed from a Kings County Supreme Court order granting respondent’s motion, after a *Singer* hearing, to dismiss the second-degree murder indictment based on a violation of the due process right to a prompt prosecution resulting from a 27-year preindictment delay in a cold-case homicide. The Second Department reversed, denied the motion to dismiss, reinstated the indictment, and remitted. In analyzing the delay using the five factors set out in *People v Taranovich*, 37 NY2d 442 (1975), the Court determined that although “extraordinary” in duration and presumptively prejudicial to respondent, the extensive delay was outweighed by the other factors: the “[prosecution’s] good cause for the delay, the nature of the crime, and the fact that [appellant] was not incarcerated in connection with this charge prior to his arrest and indictment in 2019.” Although the decedent was killed in 1992 and swabs containing DNA were recovered from her body at that time, the preindictment delay, which included delayed DNA testing, “was not due to the ‘incompetence’ of the police or the [prosecution], but rather” from inadequate DNA technology, limited resources afforded cold case homicide investigators, and the prosecution’s “apparent good faith determination to wait until they had uncovered additional evidence in connection with this case.” (Supreme Ct, Kings Co)

Matter of Harmony Q., 246 AD3d 925 (2nd Dept 2/18/2026)**ABUSE/NEGLECT - Derivative Neglect**

LASJRP: The Second Department upholds an order granting ACS’s [Administration for Children’s Services] motion for summary judgment in connection with an allegation that the mother derivatively neglected the subject child, noting that this Court, while affirming an order finding that the mother neglected the child’s older sibling, noted that ACS had established that “the mother threatened another shelter resident with a knife while leaving the [older sibling], who had been diagnosed with autism and required close supervision, unattended in their shelter unit for at least 40 minutes[, which]

Second Department *continued*

resulted in a two-week involuntary hospitalization of the mother, during which she continued to display paranoid behavior and a lack of insight into her mental illness.”

Although the prior acts of neglect occurred about six months before the subject child was born, the conduct was so proximate in time to this proceeding that it can reasonably be concluded that the condition still exists.

The JRP appeals attorney was Amy Hausknecht, and the trial attorney was Abigail Finkelman. (Family Ct, Kings Co)

People v Kimora L.H., 246 AD3d 917 (2nd Dept 2/18/2026)
ARTICLE 10 | AGENCY APPEAL | DERIVATIVE NEGLECT |
GOOD CAUSE SHOWN | AFFIRMED

ILSAPP: The New York City Administration for Children’s Services (ACS) appealed from a Kings County Family Court order permitting the parent to have unsupervised parental access, including overnights, at any home cleared by the assigned foster care agency, after an earlier finding that she derivatively abused the subject children based upon the death of the children’s half-sibling. The Second Department affirmed. Here, the record supported Family Court’s determination, because “the testimony, including from the foster care agency caseworker, along with the documentary evidence, showed that the mother had completed the services requested of her, continued to engage in therapy, and adhered to the parental access schedule, including unsupervised visits, with the children.” Brooklyn Defender Services (Jessica Marcus and Dana Leib, of counsel) represented the respondent. (Family Ct, Kings Co)

People v Molyneaux, 246 AD3d 939 (2nd Dept 2/18/2026)
INVALID APPEAL WAIVER | RIGHTS MISCHARACTERIZED &
ABSOLUTE BAR | SENTENCE NOT EXCESSIVE | AFFIRMED

ILSAPP: Appellant appealed from an Orange County Court judgment (DeRosa, J.) convicting her, upon her guilty plea, of second-degree murder. The Second Department affirmed but found the appeal waiver invalid. The court’s “terse oral colloquy mischaracterized the nature of the appeal waiver as an absolute bar to the taking of a direct appeal by stating only that it was ‘a waiver of your right to appeal your sentence as well as your conviction.’” Further, the “written appeal waiver did not contain clarifying language that appellate review remained available for certain issues.” However, the sentence was not excessive. Warren S. Hecht represented Molyneaux. (County Ct, Orange Co)

People v Morales, 246 AD3d 941 (2nd Dept 2/18/2026)
JUDICIAL MISCONDUCT - Excessive Interference In Trial

LASJRP: The Second Department, reaching defendant’s unpreserved claim in the interest of justice, finds reversible error where the trial court engaged extensively in its own areas

of inquiry; asked numerous leading questions of the People’s witnesses, including the complainant and a police officer, as to their observations of defendant; elicited identification testimony; and guided the prosecution at length in its questioning.

The court improperly took on the function and appearance of an advocate and left the impression that its opinion favored the credibility of the People’s witnesses and the merits of the People’s case. (Supreme Ct, Queens Co)

People v Smith, 246 AD3d 942 (2nd Dept 2/18/2026)
YO | RUDOLPH ERROR | SURCHARGES & FEES | MODIFIED &
REMITTED

ILSAPP: Appellant appealed from a Kings County Supreme Court judgment convicting him, upon his guilty plea, of third-degree robbery. The Second Department modified, in the interest of justice, by vacating the sentence imposed and the mandatory surcharge and fees, remitted the matter for resentencing after making a determination as to whether appellant should be afforded youthful offender treatment, and otherwise affirmed. As the prosecution conceded, the court failed to make a youthful offender determination pursuant to CPL § 720.20(1), despite it being required “in every case where the defendant is eligible, even where the defendant fails to request it, or agrees to forego it as part of a plea bargain.” Additionally, with the prosecution’s consent, the court waived appellant’s mandatory surcharge and fees. Appellate Advocates (Sankeerth Saradhi, of counsel) represented Smith. (Supreme Ct, Kings Co)

People v Sosa, 246 AD3d 943 (2nd Dept 2/18/2026)
OOP | JAIL TIME CREDIT | OOP DURATION VACATED &
REMITTED

ILSAPP: Appellant appealed from a Kings County Supreme Court judgment convicting him, upon his guilty plea, of third-degree attempted robbery. The Second Department affirmed but vacated the durational provision of the order of protection (OOP) and remitted for a new determination as to its duration. The duration of the OOP failed to account for appellant’s jail-time. Preservation was not required because appellant had no practical ability to timely object where the court did not announce the duration of the OOP at the plea or sentencing proceedings. Appellate Advocates (Elisabeth R. Calcaterra, of counsel) represented Sosa. (Supreme Ct, Kings Co)

People v Boone, 246 AD3d 1116 (2nd Dept 2/25/2026)
SORA | MATTER OUTSIDE THE RECORD | MOTION TO
STRIKE GRANTED | AFFIRMED

ILSAPP: Appellant appealed from a Queens County Supreme Court order designating him a level two sex offender under SORA. The Second Department granted appellant’s motion to strike certain portions of respondent’s brief, along with other filed material such as the arrest report and arraignment tran-

Second Department *continued*

script, as an improper attempt to include information outside the record. However, the court affirmed Supreme Court's denial of appellant's request for a downward departure. The Legal Aid Society of NYC (Tomoeh Murakami Tse and Kristin Maglabe, of counsel) represented Boone. (Supreme Ct, Queens Co)

Matter of Brianna J., 246 AD3d 1088 (2nd Dept 2/25/2026)
NEGLECT | AGENCY APPEAL | DV | PETITION REINSTATED |
REVERSED & REMITTED

ILSAPP: Agency appealed from a Kings County Family Court order dismissing, after a hearing, a neglect petition against the mother alleging she exposed the children to domestic violence. The Second Department reversed, reinstated the petitions, made a finding of neglect against the mother, and remitted for a dispositional hearing. Family Court's decision was not supported by the record. The agency met its burden by proving "that the mother neglected the children by failing to provide them with proper supervision or guardianship, and that, as a result, the children's physical or emotional conditions were impaired or were in imminent danger of becoming impaired by the acts of domestic violence perpetrated in their presence." The mother failed to exercise a minimum degree of care by permitting her abuser to return to her home despite his documented history of assault against her and an active order of protection, where he punched her and pushed her eldest child. The totality of the evidence—including the negative inference drawn from the mother's failure to testify—were sufficient to support a finding of neglect against the mother pursuant to FCA § 1012(f)(i)(B). (Family Ct, Kings Co)

Matter of Kadri K., 246 AD3d 1090 (2nd Dept 2/25/2026)
ABUSE/NEGLECT - Derivative Abuse

- Witnesses/Credibility Of Child

LASJRP: The Second Department upholds findings that respondent sexually abused the daughter and derivatively abused the son, noting, inter alia, that the differences between the daughter's testimony and statements she made to NYPD and ACS representatives constituted minor inconsistencies that did not render her testimony unworthy of belief.

The JRP appeals attorney was Polixene Petrakopoulos, and the trial attorney was Allison Reisner. (Family Ct, Queens Co)

Matter of Lopez v Rodriguez, 246 AD3d 1092
(2nd Dept 2/25/2026)

CUSTODY | NO ACKNOWLEDGMENT OF PATERNITY | *SUA SPONTE* DISMISSAL | REVERSED & REMITTED

ILSAPP: Mother appealed from an Orange County Family Court order summarily dismissing her custody petition *sua sponte*. The Second Department reversed, reinstated the petition, and

remitted for a hearing and new determination. Family Court erred by dismissing the custody petition "without conducting a hearing or considering the best interests of the child" on the basis that mother failed to produce an acknowledgment of paternity at the inquest, despite her "diligent efforts" to do so. Paternity was undisputed by the father, all parties and the AFC supported a resolution on the merits, and the child's Pennsylvania birth certificate listed the father, which, under Pennsylvania law, is only permissible "if the parties had signed a voluntary acknowledgment of paternity or there was a legal adjudication of paternity." Moreover, pursuant to FCA § 564 the Family Court "had the authority to make an order of filiation declaring the paternity of the child" despite a procedural technicality. The Legal Aid Society of Orange County (Donald M. Card, Jr., of counsel) represented Lopez. (Family Ct, Orange Co)

People v McClarin, 246 AD3d 1114 (2nd Dept 2/25/2026)

SEARCH AND SEIZURE - Auto Search -

Impoundment/Inventory

LASJRP: The Second Department orders suppression where the People failed to establish the lawfulness of the impoundment of defendant's vehicle and subsequent inventory search.

The Court notes, inter alia, that the arresting officer equivocated on whether or not the vehicle was parked legally and did not testify as to the posted time limits pertaining to the parking space at which defendant had pulled over; and that the People presented no evidence demonstrating any history of burglary or vandalism in the area. (Supreme Ct, Queens Co)

Matter of Manuel G., Jr., 246 AD3d 1086
(2nd Dept 2/25/2026)

NEGLECT | AGENCY APPEAL | DV | PETITION REINSTATED |
REVERSED & REMITTED

ILSAPP: The Administration for Children's Services of New York City (ACS) appealed from a Kings County Family Court order dismissing, after a hearing, a neglect petition against the father alleging he committed domestic violence in the children's presence. The Second Department reversed, reinstated the petition, made a finding of neglect against the father, and remitted for a dispositional hearing. Family Court's decision was not supported by the record. ACS met its burden by proving "that the children's physical, mental, or emotional conditions were impaired or in imminent danger of impairment by the father's commission of an act of domestic violence against the mother." Despite the mother initially telling a 911 operator that she did not know who cut her with a knife, the totality of the evidence—the mother's certified medical records, the children's statements, and the 911 call, coupled with the negative inference drawn from the father's refusal to testify—were sufficient to support a finding of neglect against the father pursuant to FCA § 1012(f). (Family Ct, Kings Co)

Second Department *continued***People v Alexander, 247 AD3d 774 (2nd Dept 3/4/2026)****DISCOVERY - Police Misconduct/IAB Files**

LASJRP: The Second Department concludes that the court, which limited disclosure of Internal Affairs Bureau investigation files to those with substantiated or unsubstantiated allegations, properly determined that any files with “exonerated” or “unfounded” allegations were not subject to automatic disclosure. (County Ct, Suffolk Co)

Matter of Any Vanessa M., 247 AD3d 766 (2nd Dept 3/4/2026)**DISPOSITION - Placement/Credit For Detention Time**

LASJRP: On May 24, 2024, respondent entered an admission to manslaughter in the first degree. In an amended order of disposition dated July 17, 2024, after a hearing, the Family Court adjudicated respondent a juvenile delinquent and placed her with the New York State Office of Children and Family Services for a period of three years, reduced by the period spent in detention pending disposition from May 24, 2024, to July 3, 2024.

The Second Department holds that respondent is entitled to credit for the more than 5 years she spent in detention beginning on April 15, 2019. The court failed to make a specific finding that credit would not serve the interests of the juvenile or the community, and thus the credit for time in pre-disposition detention automatically accrues. Given the award of credit, the period of placement has expired, and the OCFS is directed to release respondent. (Family Ct, Nassau Co)

People v Coghiel, 247 AD3d 781 (2nd Dept 3/4/2026)**ANDERS BRIEF | DEFICIENT | NEW COUNSEL ASSIGNED**

ILSAPP: Appellant appealed from a Westchester County Court judgment convicting him, upon a guilty plea, of first-degree manslaughter and second-degree CPW. Appellate counsel filed an *Anders* brief seeking to be relieved on the ground that there were no nonfrivolous issues to be raised on appeal. The Second Department found counsel’s *Anders* brief deficient, granted the motion to withdraw, and assigned new counsel. The brief failed “to analyze potential legal issues with reference to the facts of the case and relevant legal authority” and offered little more than a conclusory opinion that there were no nonfrivolous issues to be raised. (County Ct, Westchester Co)

People v Nathaniel, 247 AD3d 792 (2nd Dept 3/4/2026)**INVALID APPEAL WAIVER | SENTENCE NOT EXCESSIVE | AFFIRMED**

ILSAPP: Appellant appealed from a Kings County Supreme Court judgment (Walker, J.) sentencing him following his guilty plea. The Second Department found that appellant’s appeal

waiver was invalid but affirmed the sentence. The plea court “did not explain what an appeal is or that a waiver of the right to appeal is separate and distinct from those rights automatically forfeited upon a plea of guilty” and did not confirm that appellant “was voluntarily waiving his right to appeal.” Considering appellant’s “age, limited education, cognitive limitations, and lack of prior experience with the criminal justice system,” the deficient oral colloquy could not be cured by a written waiver. However, the sentence imposed was not excessive. Appellate Advocates (Lisa Napoli, of counsel) represented Nathaniel. (Supreme Ct, Kings Co)

**People v Rafikian, 247 AD3d 794 (2nd Dept 3/4/2026)
WOE | LEGAL SUFFICIENCY | DUPLICITOUS COUNTS |
REVERSED & DISMISSED**

ILSAPP: Appellant appealed from three Queens County Supreme Court judgments convicting him, upon a jury verdict, of first-degree grand larceny, second-degree grand larceny (six counts), first-degree scheme to defraud (three counts), second-degree criminal impersonation (six counts), and practicing or appearing as an attorney without being admitted and registered (three counts). The Second Department reversed and dismissed. The verdict was against the weight of the evidence as to all grand larceny convictions. The prosecution failed to prove that appellant committed “larceny by trespassory taking” where the evidence “established that the funds at issue were given to [appellant] voluntarily and were not taken without the owner’s consent.” Further, as conceded by the prosecution, there was insufficient evidence to support the second-degree criminal impersonation convictions because the prosecution “failed to present any evidence that [appellant] impersonated a real person.” Lastly, the counts of first-degree scheme to defraud and practicing or appearing as an attorney without being admitted and registered were duplicitous because “neither the verdict sheet nor the jury charge explained how the testimony and evidence adduced at trial applied to [these counts], including which counts pertained to which of the complainants,” thereby making it “impossible to determine the particular acts upon which the jury reached its verdict with respect to each of the counts.” Appellate Advocates (Sean H. Murray, of counsel) represented Rafikian. (Supreme Ct, Queens Co)

**People v Dean, 247 AD3d 782 (2nd Dept 3/4/2026)
JUROR DISCHARGED IN DEFENSE ABSENCE | NO
MEANINGFUL NOTICE OR OPPORTUNITY TO BE HEARD |
POLICE ID TESTIMONY | REVERSED**

ILSAPP: Appellant appealed from a Nassau County Supreme Court judgment convicting him, upon a jury verdict, of fourth-degree grand larceny (five counts) and petit larceny (two counts).

The Second Department reversed and remitted for a new trial. First, the Court found that it was error to permit police identification testimony of appellant based on stills from surveillance video where the sergeant’s familiarity with

Second Department *continued*

appellant was too limited to “be of assistance to the jury.” However, the error was harmless. It was “reversible error,” though, for the court to question and discharge a sworn juror in the absence of both appellant and defense counsel. Although counsel had timely informed the court that her child’s delayed school opening prevented her from arriving at the trial’s scheduled start time, the court conducted an inquiry of a juror on the record without defense counsel or appellant present after receiving a note from the juror explaining that she had just found out that her “good friend’s son passed away last night.” Pursuant to CPL 270.35, “the court, at a minimum, should have informed all parties of the substance of the inquiry and provided each side with an opportunity to be heard before making its determination to discharge the sworn juror.” Moreover, the court’s errors “were inherently prejudicial, as they deprived the defendant of an opportunity to be heard before giving meaningful notice of the contents of the note, conducting the inquiry, and discharging the juror as incapacitated.” Martin Goldberg represented Dean. (Supreme Ct, Nassau Co)

People v Arcaya, 247 AD3d 925 (2nd Dept 3/11/2026)
INVALID APPEAL WAIVER | RIGHTS MISCHARACTERIZED |
WRITTEN WAIVER NOT TRANSLATED | SENTENCE NOT
EXCESSIVE | AFFIRMED

ILSAPP: Appellant appealed from a Queens County Supreme Court judgment (Cimino, J.) sentencing him following his guilty plea. The Second Department found that appellant’s appeal waiver was invalid but affirmed the sentence. The court’s “oral colloquy mischaracterized the appellate rights waived as encompassing the loss of attendant rights to counsel and to the waiver of costs, fees, and expenses” and did not adequately explain the nature of the right to appeal nor the consequences of that forfeiture. Further, the deficient colloquy was not cured by the written waiver, “as nothing in the record demonstrates that the written appeal waiver was translated for [appellant] before it was presented to him for signature, and the court failed to ascertain whether [he] understood the contents of the written appeal waiver.” However, the sentence imposed was not excessive. Appellate Advocates (Brandon C. Vines, of counsel) represented Arcaya. (Supreme Ct, Queens Co)

People v Howard, 247 AD3d 928 (2nd Dept 3/11/2026)
INVALID APPEAL WAIVER | RIGHT MISCHARACTERIZED |
RESENTENCE NOT EXCESSIVE | AFFIRMED

ILSAPP: Appellant appealed from a Kings County Supreme Court judgment (Tomlinson, J.) resentencing him following his guilty plea. The Second Department found that appellant’s appeal waiver was invalid but affirmed the sentence. The court’s statements that “no one will provide you with counsel, transcripts or any help to appeal this conviction and sentence”

and that “no judge or group of judges will review anything that I or any other judge has done on this case” “utterly mischaracterized” the nature of the appeal waiver and suggested the waiver was “an absolute bar to the taking of an appeal.” Further, the deficient colloquy was not cured by the written waiver. However, the sentence imposed was not excessive. Appellate Advocates (Jordan A. Goodson, of counsel) represented Howard. (Supreme Ct, Kings Co)

Matter of Lashawna W. v Department of Social Servs.,
247 AD3d 918 (2nd Dept 3/11/2026)
GRANDPARENT CUSTODY | BEST-INTERESTS HEARING
REQUIRED | REVERSED & REMITTED

ILSAPP: Grandmother appealed from a Suffolk County Family Court order that summarily dismissed her petitions for guardianship and custody following the subject child’s removal from their mother’s custody. The Second Department reversed and remitted for a hearing and new determination as to the best interests of the child. Family Court erroneously dismissed grandmother’s petitions without conducting a hearing or a best-interests inquiry. The Court explicitly rejected Family Court’s “mere reliance” on the “adequate relevant information standard” in rendering its decision, as such an “undefined and imprecise” standard creates an “an unacceptably-high risk” of custody determinations that fail to “conform to the best interest of a child.” Although a hearing is not required in every custody case, “a court ‘opting to forgo a plenary hearing must take care to clearly articulate which factors were—or were not—material to its determination, and the evidence supporting its decision.” Del Atwell represented appellant. (Family Ct, Suffolk Co)

People v Sims, 247 AD3d 938 (2nd Dept 3/11/2026)
CPL § 440.10 | NEWLY DISCOVERED EVIDENCE |
REVERSED & REMITTED

ILSAPP: Appellant appealed from a Kings County Supreme Court order denying, after a hearing, his CPL § 440.10 motion to vacate a judgment convicting him of second-degree murder and fourth-degree CPW following a jury verdict. The Second Department reversed, granted the 440 motion, and remitted for a new trial. The court erred in denying the motion on newly discovered evidence grounds. Appellant’s 1999 conviction for the shooting death of a restaurant employee was largely based on the testimony of two witnesses: Julius Graves, appellant’s friend who identified him as the shooter; and Shalema R., who lived across the street and testified that she saw two men enter the restaurant, heard gunshots, and then saw the same men run out of the building, the taller one holding “a big gun.” At trial the prosecution presented evidence that appellant was taller than Graves. At the 440 hearing, Shalema R. recanted her trial testimony and testified that police separated her from her young son during questioning and pressured her to “fill in” missing information. Additionally, the defense presented a new

Second Department *continued*

witness, Rachel L., a 17-year-old at the time of the shooting who knew both appellant and Graves. She testified under a material witness order that she had observed Graves fleeing from the restaurant with “a long gun.” She said she had initially withheld this information because Graves had threatened her and that she “was reluctant to testify at the hearing” because “she feared for her safety.” The Second Department determined that “[w]hen Rachel L.’s testimony is considered in light of Graves’s trial testimony and Shalema R.’s recantation, there is a reasonable probability that had such evidence been received at trial, the verdict would have been more favorable” to appellant. (Although not in the decision, counsel stated at oral argument that the newly discovered evidence of Rachel L.’s identification of Graves as the shooter was discovered years after the verdict via a FOIL request that disclosed a DD5 withheld from the defense, wherein another person told police Rachel L. had implicated Graves.) Emery Celli Brinckerhoff Abady Ward & Maazel, LLP (Ilann M. Maazel, Samuel Shapiro, Nairuby L. Beckles, Law Offices of Thomas Hoffman, P.C., and Jonathan Hiles, of counsel) represented Sims. (Supreme Ct, Kings Co)

Whelan v Whelan, 247 AD3d 966 (2nd Dept 3/11/2026)
DIVORCE | CHILD SUPPORT DOWNWARD MODIFICATION |
NO CHANGE IN CIRCUMSTANCES | REVERSED

ILSAPP: Defendant appealed from a Kings County Supreme Court order granting plaintiff’s motion for a downward modification of his child support obligation pursuant to the parties’ stipulated terms of their divorce. The Second Department reversed. Plaintiff failed to establish the requisite substantial change in circumstances warranting downward modification of his support obligation. A parent’s child support obligation “is not necessarily determined by his or her current financial condition, rather, it is determined by his or her ability to provide support.” Here, plaintiff’s statement of net worth revealed that he possessed “sufficient means to provide child support at the level set forth by the parties in the stipulation,” despite his reduced income stemming from the COVID-19 pandemic. Further, the parties were bound by the terms of their stipulation “waiv[ing] any modification in child support obligations based upon an involuntary change in a party’s income of 15% or more.” Cohen Clair Lans Greifer Thorpe & Rottenstreich LLP (Joseph F. De Simone and Sunita L. Kurra, of counsel) represented appellant. (Supreme Ct, Kings Co)

Matter of Zakaria v Zakaria, 247 AD3d 919
(2nd Dept 3/11/2026)
CUSTODY MODIFICATION | EXPANDED PARENTAL ACCESS |
MODIFIED & REMITTED
ILSAPP: Father appealed from a Kings County Family Court

order modifying the parental access provisions of the parties’ custody stipulation to expand his parenting time by only two additional weeks in the summer and “encourage[ing] the parties to work with one another to agree on parental access for special events.” The Second Department modified the order by further expanding father’s parental access via a detailed schedule and remitted to the Family Court to establish an appropriate schedule for the father during special occasions and school breaks. Under the circumstances in the record, Family Court “should have explicitly addressed the father’s request” for expanded parenting time during school breaks, holidays, birthdays, and other special occasions like weddings and Bar Mitzvahs. Mother’s history of obstructing father’s parenting time and “the parties’ inability to cooperate in resolving parental access matters” warranted a definitive parental access schedule from the court, rather than leaving it to the parties’ discretion. Tammi D. Pere represented appellant. (Family Ct, Kings Co)

People v Burks, 247 AD3d 1053 (2nd Dept 3/18/2026)
ANDERS BRIEF | DEFICIENT | NEW COUNSEL ASSIGNED
ILSAPP: Appellant appealed from an Orange County Court judgment convicting him, upon his guilty plea, of third-degree CPCS and EWC. The Second Department found counsel’s *Anders* brief deficient, granted the motion to withdraw, and assigned new counsel. The brief failed “to analyze potential appellate issues with reference to legal authority or highlight facts in the record that might arguably support the appeal” and offered little more than a conclusory opinion that there were “no nonfrivolous issues to raise on appeal.” (County Ct, Orange Co)

People v Carroll, 247 AD3d 1056 (2nd Dept 3/18/2026)
PHYSICAL INJURY
LASJRP: The Second Department vacates defendant’s burglary convictions, concluding that they were against the weight of the evidence with respect to the element of physical injury.

Although the victim testified that he suffered pain as high as 6 on a scale of 1 to 10, he also testified that he was “in a little pain. Wasn’t much pain, but [he] was in pain.” There were no photographs of the victim’s injury and the victim testified that he never requested medical attention. (County Ct, Nassau Co)

People v Facundo, 247 AD3d 1057 (2nd Dept 3/18/2026)
ANDERS BRIEF | DEFICIENT | NEW COUNSEL ASSIGNED
ILSAPP: Appellant appealed from a Westchester County Court judgment convicting him, upon his guilty plea, of misdemeanor DWI. The Second Department found counsel’s *Anders* brief deficient, granted the motion to withdraw, and assigned new counsel. The brief failed “to analyze potential legal issues with reference to the facts of the case and relevant legal authority” and offered little more than a “conclusory opinion” that there were “no nonfrivolous issues to be raised.” (County Ct, Westchester Co)

Second Department *continued***People v Finney, 247 AD3d 1066 (2nd Dept 3/18/2026)
SORA | IMPROPER POINTS ASSESSMENT | RISK FACTOR 9 |
AFFIRMED**

ILSAPP: Appellant appealed from a Richmond County Supreme Court order designating him a level two sex offender under SORA. The Second Department affirmed but found that the SORA court had improperly assessed 30 points under risk factor 9 (prior criminal history). The prosecution conceded that appellant's "conviction of attempted robbery in the second degree occurred after his commission of the instant offense" and should not have been counted under risk factor 9 as a prior conviction for a violent felony. However, the court replaced the erroneous 30-point assessment with a 15-point assessment under risk factor 9 for "having a prior youthful offender adjudication for a non-violent felony." Accordingly, appellant's score still fell within the presumptive risk level two range. (Supreme Ct, Richmond Co)

Matter of Isaiah D., 247 AD3d 1022 (2nd Dept 3/18/2026)

The Second Department reverses a neglect finding that was based on excessive corporal punishment where the parents' version and the child's version of the incident differed significantly from each other, and the statements of the other children who were present at the incident supported the mother's and the father's version. "[W]here, as here, the Family Court's credibility determination is not supported by the record, this Court is free to make its own credibility assessments and overturn the determination of the hearing court." However, the Court upholds the neglect finding based on a failure to plan for the child.

The parents' contentions that the Family Court was biased against them based on their religious views are unpreserved for appellate review. They failed to move for recusal.

The dispositional directive that the parents participate in programming, such as an educational program, support group, therapy, or similar program regarding sexual orientation and gender identity, was in the child's best interests. (Family Ct, Kings Co)

**People v Legrand, 247 AD3d 1068 (2nd Dept 3/18/2026)
SORA | IMPROPER POINTS ASSESSMENT |
RISK FACTORS 4 & 12 | REVERSED & REMITTED**

ILSAPP: Appellant appealed from a Queens County Supreme Court order designating him a level three sex offender under SORA following his convictions for second-degree rape and second- and third-degree promoting prostitution. The Second Department reversed and remitted for a new hearing on "whether an upward departure from [appellant's] presumptive risk level designation is warranted." Supreme Court erred in assessing 20 points under risk factor 4 (continuing course of

sexual misconduct) because the evidence demonstrated that appellant engaged in sexual contact with the complainant on only one occasion, and the prosecution failed to prove "by clear and convincing evidence that, under the theory of accessorial liability, [appellant] shared the intent of the complainant's clients in engaging in sexual contact with her." Further, the 10 points assessed under risk factor 12 (failure to accept responsibility for criminal conduct) were not appropriate because "[a]t the time [appellant] denied responsibility, he was challenging his conviction on direct appeal." The Court found that appellant's total score should be 95 points, presumptively making him a level two sex offender. Remittal was appropriate for consideration of the prosecution's upward departure arguments. Appellate Advocates (Chelsea Lopez and Anders Nelson, of counsel; Amy Pass and Hailey Gordon on the brief) represented Legrand. (Supreme Ct, Queens Co)

**Light-Sanicola v Sanicola, 247 AD3d 1006
(2nd Dept 3/18/2026)****DIVORCE | CHILD SUPPORT DOWNWARD MODIFICATION |
NO CHANGE IN CIRCUMSTANCES | REVERSED**

ILSAPP: Plaintiff parent appealed from a Kings County Supreme Court order granting defendant parent's motion for a downward modification of his child support obligation pursuant to the parties' stipulated terms of their divorce. The Second Department reversed. Defendant failed to establish the requisite substantial change in circumstances warranting downward modification of his support obligation. A reduction in a parent's net income is part of the court's child support modification analysis, but "it does not limit the court's ability to examine the financial circumstances at the time of the prior support order [and] the financial circumstances at the time of the application for modification, and to consider whether the payor has the means to comply with the prior order." Here, defendant's statement of net worth revealed that he possessed "sufficient means to provide child support at the level set forth by the parties in the stipulation," despite his reduced income stemming from change in employment. Quatela | Chimeri PLLC (Christopher J. Chimeri and Sophia Arzoumanidis, of counsel) represented Light-Sanicola. (Supreme Ct, Kings Co)

**Matter of St. Sume v Herrera, 247 AD3d 1046
(2nd Dept 3/18/2026)****PARENTAL ACCESS | SPECIFIC SCHEDULE REQUIRED |
MODIFIED & REMITTED**

ILSAPP: Mother appealed from a Kings County Family Court order awarding father sole legal and physical custody of the children and granting certain parental access to mother that did not provide for additional parental access when school was not in session. The Second Department modified by adding a provision awarding mother additional parental access, remitted for the issuance of an amended order, and otherwise affirmed.

Second Department *continued*

“[A]bsent extenuating circumstances, a court should establish a [p]arenting time schedule which ensure[s] that both [parents] ... have [significant] quality time with the child when [the child] is not in school.[.]” Considering the parties’ relationship, “the court should have set forth a specific” parental access schedule providing mother “significant quality time” with the children “during the summer months, school holidays and vacations, and legal holidays that do not fall on a Friday or Monday.” Richard L. Herzfeld represented the mother, St. Sume. (Family Ct, Kings Co)

People v Allen, 247 AD3d 1222 (2nd Dept 3/25/2026)
SORA | MATTER OUTSIDE THE RECORD | MOTION TO STRIKE GRANTED | AFFIRMED

ILSAPP: Appellant appealed from a Suffolk County Court order designating him a level three sex offender under SORA and filed a motion to strike “portions of the respondent’s brief on the ground that they refer to matter dehors the record.” The Second Department granted the motion to strike. However, the court affirmed the court’s denial of appellant’s request for a downward departure. Suffolk County Legal Aid Society (Amanda E. Schaefer, of counsel) represented Allen. (County Ct, Suffolk Co)

People v Arevalo, 247 AD3d 1211 (2nd Dept 3/25/2026)
ANDERS BRIEF | DEFICIENT | NEW COUNSEL ASSIGNED

ILSAPP: Appellant appealed from a Nassau County Court judgment convicting him, upon his guilty plea, of second-degree CPW. The Second Department found counsel’s *Anders* brief deficient, granted the motion to withdraw, and assigned new counsel. The brief failed “to analyze potential appellate issues with reference to legal authority or highlight facts in the record that might arguably support the appeal” and offered little more than a conclusory opinion that appellant’s plea and appeal waiver were valid and that “no nonfrivolous issues exist[ed].” (County Ct, Nassau Co)

People v Edwards, 247 AD3d 1214 (2nd Dept 3/25/2026)
CORAM NOBIS | LATE NOTICE OF APPEAL | GRANTED

ILSAPP: Appellant filed a petition for a writ of error coram nobis seeking leave to file a late notice of appeal from a Nassau County Court judgment rendered in 2023. The Second Department granted appellant’s application where he “established his entitlement to the relief requested,” pursuant to *People v Syville* (15 NY3d 391 [2010] [counsel was ineffective where counsel failed to comply with a timely request for filing the notice of appeal]). Martha Krisel represented Edwards. (County Ct, Nassau Co)

People v Johnson, 247 AD3d 1215 (2nd Dept 3/25/2026)
ILLEGAL SENTENCE | CONSECUTIVE TO CONCURRENT | MIRANDA VIOLATION | HARMLESS ERROR | MODIFIED
ILSAPP: Appellant appealed from a Kings County Supreme

Court judgment convicting him, upon a jury verdict, of second-degree attempted murder and second-degree CPW and sentencing him, as a second violent felony offender, to consecutive determinate terms of imprisonment. The Second Department modified by running the two sentences concurrently and, as modified, affirmed. The imposition of consecutive sentences was illegal because the prosecution “did not prove that [appellant] had any unlawful intent that was separate from his intent to shoot the victim.” The Court also held that the court erred in admitting appellant’s statements where appellant “unequivocally invoked his right to remain silent” after *Miranda* warnings, the detectives “failed to scrupulously honor that right,” and “[t]here was no pause” prior to questioning after appellant invoked his right. However, the error was harmless where the evidence “was overwhelming.” Appellate Advocates (Anna Jouravleva, of counsel) represented Johnson. (Supreme Ct, Kings Co)

People v Pope, 247 AD3d 1217 (2nd Dept 3/25/2026)
CONFRONTATION CLAUSE | FIRST-TIME IN-COURT IDENTIFICATION | CROSS RACIAL ID JURY CHARGE | HARMLESS ERROR | AFFIRMED

ILSAPP: Appellant appealed from a Kings County Supreme Court judgment convicting him, upon a jury verdict, of second-degree murder and second-degree CPW. The Second Department affirmed. Appellant’s Confrontation Clause rights were violated through the admission of the autopsy report and the medical examiner’s testimony about the autopsy, “which she did not perform or observe being performed.” Additionally, the court “improvidently exercised its discretion in permitting a witness to make a first-time in-court identification” of appellant and “erred in failing to give an expanded jury charge on cross-racial identification.” Nevertheless, these errors were all deemed harmless, both individually and cumulatively. “The autopsy report and the medical examiner’s testimony [had] little to no bearing on the defendant’s defense, which was predicated on mistaken identity.” Further, “there was overwhelming evidence of the defendant’s guilt, including establishing his identity as the shooter, and no significant probability that the defendant would have been acquitted if not for the [jury charge] error.” (Supreme Ct, Kings Co)

Matter of Saige F., 247 AD3d 1183 (2nd Dept 3/25/2026)
ABUSE/NEGLECT - Hearsay Evidence/Prior Testimony

LASJRP: The Second Department upholds neglect findings against the mother and father, noting, inter alia, that the Family Court properly admitted into evidence at the fact-finding hearing transcripts of the testimony of a physician from a prior hearing conducted pursuant to FCA § 1027, as the court determined that the witness was unavailable (see CPLR 4517[3][ii]; see also CPLR 4517[4]).

Second Department *continued*

The JRP appeals attorney was Andrew Ford, and the trial attorney was Alison Reisner. (Family Ct, Queens Co)

Matter of Saint B., 247 AD3d 1181 (2nd Dept 3/25/2026)
AGENCY APPEAL OF 1027 HEARING | IMMINENT RISK |
REVERSED

ILSAPP: The agency appealed from a Kings County Family Court order, issued after a § 1027 hearing, denying an application to remove the subject child from the mother pending the outcome of the case. The Second Department reversed. The Family Court's determination "lacked a sound and substantial basis in the record," since returning the child to the mother's custody presented an imminent risk to the child. The record showed that "the mother's previous adjudications of neglect of her other children...were all based, in part, on excessive corporal punishment" and that all five of those children remained in foster or kinship care. Moreover, despite having completed certain court-directed services, "including an anger management course, the evidence established that the mother failed to benefit from those services or gain insight into the issues underlying her previous adjudications of neglect." Under these circumstances, the child faced an "imminent risk" that could not be "mitigated by reasonable efforts to avoid removal," and continued placement in the agency's custody during the pendency of the proceedings was necessary. (Family Ct, Kings Co)

People v Alberto, 248 AD3d 808 (2nd Dept 4/1/2026)
SUPPRESSION | CPW | NO REASONABLE SUSPICION FOR
POLICE PURSUIT | REVERSED & DISMISSED

ILSAPP: Appellant appealed from a Kings County Supreme Court judgment convicting him, upon a jury verdict, of second-degree CPW. The Second Department reversed, granted appellant's motion to suppress the gun, and dismissed the indictment. The testifying officer's "observations did not constitute specific circumstances indicative of criminal activity" to establish reasonable suspicion necessary to lawfully pursue appellant. Neither the observation of appellant running from a "group of civilians chasing him, nor the female voice saying 'that's him, he's getting away, grab him'...were sufficient to confer reasonable suspicion that [appellant] was engaged in criminal activity, as opposed to [appellant] being the victim of criminal activity or having no connection to any criminal activity." Further, where the officer "was not in uniform and did not identify himself as a police officer," there was no way for appellant to know whether he was fleeing from police or the group members. Thus, the seizure of the firearm, which was not attenuated from the illegal pursuit, was unlawful. Since appellant's conviction was not supported by legally sufficient evidence without the firearm, the indictment must be dis-

missed. The Legal Aid Society of NYC (Samuel Barr, of counsel) represented Alberto. (Supreme Ct, Kings Co)

Aronov v Matvienko, 248 AD3d 724 (2nd Dept 4/1/2026)
CIVIL CONTEMPT | DIVORCE | NONCOMPLIANCE WITH
SUBPOENAS | SUA SPONTE PRECLUSION ORDER |
REVERSED & REMITTED

ILSAPP: Defendant appealed from a Queens County Supreme Court order denying his motion to hold plaintiff and a nonparty in contempt for failing to comply with so-ordered subpoenas and instead, *sua sponte*, precluding plaintiff from introducing or opposing evidence of her income at trial. The Second Department reversed and remitted for a hearing to determine whether plaintiff and the nonparty should be held in contempt for the alleged noncompliance. Pursuant to CPLR § 2308(a), Supreme Court should have first conducted an evidentiary hearing as to the disputed allegations underlying defendant's motion for contempt prior to issuing a remedy under CPLR § 3126 in response to the alleged noncompliance with the so-ordered subpoenas. Saltzman Chetkof & Rosenberg, LLP (Neelam B. Bhagrath and Lee Rosenberg, of counsel) represented Matvienko. (County Ct, Queens Co)

People v David, 248 AD3d 813 (2nd Dept 4/1/2026)
SEARCH AND SEIZURE - Auto Stop/Reasonable Suspicion
- Search Of Container Incident To
Arrest

LASJRP: The Second Department first rejects the People's contention that defendants lacked standing to challenge the search of a vehicle because it was stolen. That has no bearing on defendants' right to seek suppression of evidence as the fruits of an allegedly illegal arrest, and defendants had standing to challenge the recovery of a firearm from the vehicle, as the charges related to that firearm were based solely on the statutory presumption.

However, the Court reverses an order granting suppression. The police had reasonable suspicion supporting a vehicle stop where the radio transmission described a vehicle that had been involved in an armed robbery earlier that day as a black Honda Accord with a Pennsylvania license plate number and directed the officers to a specific location; the officers arrived at that location within approximately five minutes and observed a black Honda Accord parked there with its engine running; and the vehicle's location had been detected by a license plate reader approximately five minutes prior to the stop.

Where, after the vehicle was boxed in by police vehicles, defendants tried to escape the scene in the vehicle and continually refused the officer's directives to lower the heavily tinted car windows or exit the vehicle, the officers acted appropriately in breaking the front windows for their own safety and in removing defendants from the vehicle and placing them in handcuffs. The police thereafter had probable cause to arrest defendants once an officer observed a firearm in plain view in

Second Department *continued*

the compartment of the driver's side door.

Under these circumstances, the People demonstrated the presence of exigent circumstances justifying the search of defendant Rivera's fanny pack incident to arrest. Also, the fanny pack, which Rivera had been wearing across his chest, had not been reduced to the exclusive control of the police and was clearly of sufficient size to hold a handgun.

Cocaine was properly recovered from defendant Coria as part of a lawful stationhouse inspection of objects on his person.

One judge dissents and would uphold suppression of evidence found in the fanny pack and defendants' pockets. (Supreme Ct, Queens Co)

Matter of Manno v Werley, 248 AD3d 792
(2nd Dept 4/1/2026)

CUSTODY MODIFICATION | NEW DEVELOPMENTS OUTSIDE THE RECORD | REVERSED & REMITTED

ILSAPP: Mother appealed from a Suffolk County Family Court order denying, after a hearing, her petition to modify a prior custody order issued in the Commonwealth of Virginia and granting father's petition to award him sole legal and physical custody of the child, with parental access to mother. The Second Department reversed and remitted for an expedited hearing and new determination as to the parties' petitions. New developments since the appealed-from [] April 2022 order, as amended in April 2024, rendered the existing record insufficient to determine the child's best interests and required a new hearing (*see Matter of Michael B.*, 80 NY2d 299 [1992]). The Second Department did not express any opinion as to the appropriate determination. Nick Bologna & Associates, P.C. represented Manno. (Family Ct, Suffolk Co)

People v McCutchen, 248 AD3d 827 (2nd Dept 4/1/2026)
SENTENCING | SECOND FELONY OFFENDER | PROCEDURAL ERROR | REMITTED FOR RESENTENCING

ILSAPP: Appellant appealed from a Rockland County Court judgment convicting him, following a bench trial, of first-degree criminal contempt, resisting arrest, and second-degree obstructing governmental administration. The Second Department vacated the sentence, affirmed the judgment as modified, and remitted for resentencing. County Court erroneously sentenced appellant "as a second felony offender without adjudicating him as such in compliance with the procedural requirements of CPL [§] 400.21" and without providing him with "notice and an opportunity to be heard." Preservation was not required "because the court did not advise [appellant] that he would be sentenced as a second felony offender and he had no opportunity to object to the deficiency of the proceeding." Rockland County Public Defender's Office (Samuel Coe, of counsel) represented McCutchen. (County Ct, Rockland Co)

People v Mendez, 248 AD3d 830 (2nd Dept 4/1/2026)
INVALID APPEAL WAIVER | ABSOLUTE BAR | SENTENCE NOT EXCESSIVE | AFFIRMED

ILSAPP: Appellant appealed from a Rockland County Court judgment (Bianchi, J.) convicting him, upon his guilty plea, of first-degree course of sexual conduct against a child. The Second Department found that appellant's appeal waiver was invalid but affirmed the sentence. The court's "terse oral colloquy mischaracterized the nature of the appeal waiver as an absolute bar to the taking of a direct appeal by stating only that it was a waiver of the 'right to appeal your conviction and sentence.'" However, the sentence imposed was not excessive. Rockland County Public Defender's Office (Lois Cappelletti, of counsel) represented Mendez. (County Ct, Rockland Co)

People v Peralta, 248 AD3d 833 (2nd Dept 4/1/2026)
INVALID APPEAL WAIVERS | TERSE COLLOQUIES | NO WRITTEN WAIVERS | SENTENCE NOT EXCESSIVE |

AFFIRMED

ILSAPP: Appellant appealed from two Nassau County Supreme Court judgments (Murphy, J.) convicting him, upon his guilty pleas, of fifth-degree attempted CPCS and fourth-degree CPCS. The Second Department found appellant's appeal waivers were invalid in both cases but affirmed the sentences. The court's "terse oral colloquies failed to establish that [appellant] understood the nature of the rights he was waiving and the rights he retained and were not supplemented by written waiver forms, which might have cured the deficiencies in the court's colloquies." However, the sentences imposed were not excessive. Jan Murphy represented Peralta. (Supreme Ct, Nassau Co)

People v Reyes, 248 AD3d 834 (2nd Dept 4/1/2026)
LESSER INCLUDED OFFENSES | COUNTS DISMISSED

ILSAPP: Appellant appealed from a Nassau County Supreme Court judgment convicting him, upon a jury verdict, of first- and third-degree robbery, petit larceny, and resisting arrest. The Second Department vacated the third-degree robbery and petit larceny convictions and sentences, dismissed those counts of the indictment, and otherwise affirmed. As conceded by the prosecution, appellant's convictions of third-degree robbery and petit larceny were both lesser included offenses of first-degree robbery. Matthew W. Brissenden represented Reyes. (Supreme Ct, Nassau Co)

People v Williams, 248 AD3d 836 (2nd Dept 4/1/2026)
LESSER INCLUDED OFFENSE | COUNT DISMISSED

ILSAPP: Appellant appealed from a Nassau County Court judgment convicting him, upon a jury verdict, of first- and second-degree criminal contempt, and second-degree harassment.

Second Department *continued*

The Second Department vacated the second-degree criminal contempt conviction and sentence, dismissed that count of the indictment, and otherwise affirmed. As conceded by the prosecution, appellant's conviction of second-degree criminal contempt "must be vacated since that count is a lesser included offense of" first-degree criminal contempt. Richard M. Langone represented Williams. (County Ct, Nassau Co)

Matter of Zielazny v Martorano, 248 AD3d 803
(2nd Dept 4/1/2026)

**CUSTODY MODIFICATION | SPECIFIC PROVISIONS
DELINEATING PARENTAL ACCESS | MODIFIED**

ILSAPP: Father appealed from a Suffolk County Family Court order modifying the parties' custody stipulation by granting mother's cross-petition for sole legal and physical custody of the child, with parental access to father. The Second Department modified the order by adding detailed provisions and procedures pertaining to father's parental access – such as seven weeks of access over the summer break, the mechanics of monthly parental access in Florida and alternating holidays, the specific hours of daily FaceTime contact, and a provision permitting father to add up to one week of missed parenting time to his summer parental access in New York. On this record, Family Court should have granted father's request to modify "certain portions of the parental access schedule," rather than leaving the specifics to the parties' discretion. Since the parties resided in different states (New York and Florida), the child had now reached school age, and the parents' "relationship had deteriorated to the point where they could not communicate and engage in joint decision-making concerning the child," modification of father's parental access was "necessary to ensure the best interests of the child." However, with respect to father's allegations of parental alienation by the mother, a change in custody was not justified because, while "mother's past behavior did verge on parental alienation, [it] did not rise to [that] level." Kule Seid-Vazana & Associates, P.C. (Danielle J. Seid-Vazana, of counsel) represented Zielazny. (Family Ct, Suffolk Co)

People v Aponte, 248 AD3d 938 (2nd Dept 4/8/2026)
**EXCESSIVE SENTENCE | TERRORISTIC THREAT | MENTAL
HEALTH | NO TRIAL PENALTY | MODIFIED**

ILSAPP: Appellant appealed from a Richmond County Supreme Court judgment convicting him, following a jury verdict, of making a terroristic threat (4 counts), second-degree aggravated harassment (9 counts), second-degree criminal contempt, and second-degree obstructing governmental administration (8 counts), and sentencing him to an aggregate term of 24 years of incarceration plus 5 years' PRS. The Second Department reduced the aggregate prison term to 8 years. The

trial court properly found appellant fit to stand trial following a second competency evaluation, despite the fact that he had previously been found [un]fit and had been admitted to a psychiatric facility. The Second Department noted that the court itself observed appellant's awareness and ability to participate in proceedings. Further, while appellant received a harsher sentence than he was offered pre-trial, this fact "standing alone [did not] establish that [he] was punished for exercising his right to trial." However, "the sentence imposed was excessive to the extent indicated." Appellate Advocates (Yaniv Kot and Chelsey Amelkin, of counsel) represented Aponte. (Supreme Ct, Richmond Co)

Matter of Caia N., 248 AD3d 919 (2nd Dept 4/8/2026)

In related Article 10 and Article 6 proceedings, the Family Court enjoined the mother from filing any additional motions or petitions without leave of court. The Second Department finds no error. The mother brought multiple applications seeking the same relief based on the same allegations. While public policy generally mandates free access to the courts, a party may forfeit that right when that party abuses the judicial process by engaging in meritless litigation motivated by spite or ill will. (Family Ct, Kings Co)

Matter of Gael B. P., 248 AD3d 920 (2nd Dept 4/8/2026)
**ABUSE/NEGLECT - Corroboration
- Derivative Neglect**

LASJRP: The Second Department concludes that the child's out-of-court statements regarding acts of domestic violence committed by the father in the child's presence were adequately corroborated by a caseworker's testimony that the child's demeanor changed and she became sad as she described the incident, and the father's testimony about the series of events leading up to the incident.

The Court upholds a finding of derivative neglect [as to a younger child who was born shortly after the incident], noting that the father's neglect demonstrated a flawed notion of parental responsibility and was a generally reliable indicator that the father would place his other children at substantial risk of harm.

The JRP appeals attorney was Amy Hausknecht, and the trial attorneys were Kayla Harrington and Forabo Fagbulu. (Family Ct, Kings Co)

People v Rountree, 248 AD3d 946 (2nd Dept 4/8/2026)
**APPEAL WAIVER | EXCESSIVENESS CARVE-OUT |
SENTENCE NOT EXCESSIVE | AFFIRMED**

ILSAPP: Appellant appealed from a Queens County Supreme Court sentence (Kirschner, J.) on the grounds that the sentence was excessive. The Second Department affirmed but found that appellant's appeal waiver did not preclude appellate review of the excessiveness of the sentence where the plea court "expressly excluded a challenge to the excessiveness of the

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sentence imposed from the challenges foreclosed by the waiver.” However, the sentence was not excessive. Appellate Advocates (Russ Altman-Merino, of counsel) represented Rountree. (Supreme Ct, Queens Co)

People v Walters, 248 AD3d 947 (2nd Dept 4/8/2026)
People v Robert, 248 AD3d 944 (2nd Dept 4/8/2026)
CORAM NOBIS | IAC | FAILURE TO FILE NOTICES OF APPEAL | GRANTED

ILSAPP: Appellants, in separate appeals, filed petitions for writs of error coram nobis seeking leave to file late notices of appeal from Kings County Supreme Court judgments rendered in 2023 and 2017, respectively. The Second Department granted both petitions where appellants “established [their] entitlement to the relief requested” pursuant to *People v Syville* (15 NY3d 391 [2010] [counsel was ineffective due to failure to comply with client’s timely request to file notice of appeal]). Appellate Advocates (Angad Singh, of counsel) represented Walters; The Legal Aid Society of NYC (Lauren E. Jones, of counsel) represented Robert. (Supreme Ct, Kings Co)

People v Waters, 248 AD3d 947 (2nd Dept 4/8/2026)
SURCHARGES & FEES | MODIFIED & FEES VACATED

ILSAPP: Appellant appealed from a Kings County Supreme Court judgment convicting him, upon his guilty plea, of second-degree CPW. The Second Department vacated the imposition of the mandatory surcharge and fees in the interest of justice, and on consent of the prosecution, and otherwise affirmed. CPL § 420.35(2-a) permits the waiver of surcharges and fees for individuals under 21 years old at the time of offense. Appellate Advocates (Christiana Johnson, of counsel) represented Walters [sic]. (Supreme Ct, Kings Co)

People v Bourdeau, 248 AD3d 1050 (2nd Dept 4/15/2026)
30.30 | PROSECUTION’S APPEAL | HEARING REQUIRED | REVERSED

ILSAPP: The prosecution appealed from a Kings County Supreme Court order summarily granting respondent’s motion to dismiss the indictment because he was deprived of his statutory right to a speedy trial, pursuant to CPL § 30.30(1)(a). The Second Department reversed & remitted for a hearing pursuant to CPL § 210.45(6) and a new determination as to respondent’s 30.30 motion. The lower court erred by failing to hold a hearing on respondent’s 30.30 motion, despite the “factual dispute as to the excludability of [three] time periods.” Further, review of the record established that two other time periods attributable to defense counsel’s adjournment requests should not have been charged to the prosecution, and the court “improperly determined” the date of trial readiness by one day. (Supreme Ct, Kings Co)

People v Espinosa, 248 AD3d 1054 (2nd Dept 4/15/2026)
ORDER OF PROTECTION | NO AUTHORITY TO ISSUE | AFFIRMED & VACATED OOP

ILSAPP: Appellant appealed from a Kings County Supreme Court judgment convicting him, upon his guilty plea, of third-degree attempted burglary. The Second Department affirmed the judgment but vacated the OOP as a matter of discretion in the interest of justice. “[T]he court had no authority to issue an order of protection in favor of that individual, as he was neither a victim nor a witness to the particular crime to which the defendant entered a plea of guilty.” The Legal Aid Society of NYC (Robin Richardson, of counsel) represented Espinosa. (Supreme Ct, Kings Co)

People v Garcia, 248 AD3d 1054 (2nd Dept 4/15/2026)
COMPETENCY TO STAND TRIAL | FURTHER PROCEEDINGS NEEDED | REVERSED & REMITTED

ILSAPP: Appellant appealed from a Suffolk County Court judgment convicting him, upon a jury verdict, of second-degree CPW and related charges. The Second Department reversed in the interest of justice and remitted “for new competency examinations, a competency hearing if warranted, and, if and when [he] is found competent, a new trial.” The trial court should have “conducted further proceedings with respect to [appellant’s] competency before proceeding to trial.” His “bizarre statements” and “conduct during the course of the proceedings demonstrated a lack of understanding of the consequences of his actions” and “the consequences of the proceedings or an ability to assist in his own defense.” Although appellant was found competent by two psychologists in April 2023, “the passage of time and the lack of contemporaneous psychiatric reports of [his] mental condition at the time of” the October 2023 trial would have rendered a reconstruction hearing “futile.” Charles E. Von Schmidt represented Garcia. (County Ct, Suffolk Co)

People v Kroll, 248 AD3d 1059 (2nd Dept 4/15/2026)
**RIGHT TO COUNSEL - Decision-Making Authority
 RIGHT TO TESTIFY - Suppression Hearing**

LASJRP: The Second Department finds no error where defendant sought to testify at the suppression hearing over his own counsel’s objection, but, after the court, upon inquiry, found that defendant’s testimony would not be relevant to the suppression issues, the court determined that defendant should not be allowed to testify.

The Court notes that a defendant has no absolute right to testify at a suppression hearing and that the decision should be left to defense counsel because it is a strategic litigation decision requiring expertise. Here, each of defendant’s assigned counsel met with defendant multiple times and both attorneys concluded that there was nothing defendant could testify to that was relevant to the scope of the suppression hearing. (Supreme Ct, Nassau Co)

Second Department *continued***Militana v DeMartino, 248 AD3d 1024 (2nd Dept 4/15/2026)
DIVORCE | CHILD SUPPORT | STEP-DOWN ORDER OF CHILD
SUPPORT REQUIRED | MODIFIED**

ILSAPP: Appellant appealed from a Nassau County Supreme Court judgment of divorce directing him to pay \$3,125 per month in child support until the younger of the two children reached 21 years of age, along with other directives. The Second Department modified. Family Court “should have directed [appellant] to pay [\$3,125] until the parties’ older child reache[d] 21 years of age and thereafter to pay child support in the amount of \$2,125 per month until the parties’ younger child reache[d] 21 years of age.” J. Douglas Barics represented DeMartino. (Supreme Ct, Nassau Co)

**Matter of Parco v Parco, 248 AD3d 1044
(2nd Dept 4/15/2026)****CUSTODY | *SUA SPONTE* DISMISSAL | UCCJEA |
JURISDICTION UNDER DRL § 76 | REVERSED & REMITTED**

ILSAPP: Mother appealed from a Richmond County Family Court order that *sua sponte* summarily dismissed her 2025 custody modification petition on the grounds that the court had addressed the same application in its 2024 order of dismissal. The Second Department reversed, reinstated the 2025 petition, and remitted for a determination as to whether Family Court had jurisdiction pursuant to the UCCJEA. Family Court erred by sua sponte dismissing appellant’s 2025 custody modification petition in reliance on the facts that existed at the time of its 2024 order of dismissal. While appellant’s 2024 custody modification petition may have been summarily dismissed for lack of subject matter jurisdiction at that time (as the children had not yet resided in New York for more than six months so as to render New York their “home state”), the passage of time since appellant’s 2025 custody modification petition may have satisfied the jurisdictional requirements. Consequently, pursuant to DRL § 76, Family Court should have: (1) made a determination as to the children’s “home state”; (2) determined whether there were already pending custody proceedings concerning the children in another state having jurisdiction; and (3) considered the factors under DRL § 76-f in the event that New York was found to be an inconvenient forum. Kirkland & Ellis LLP (Ashley P. Grolig, of counsel) represented appellant. (Family Ct, Richmond Co)

**People v Barnett, 248 AD3d 1130 (2nd Dept 4/22/2026)
SURCHARGES & FEES | UNDER 21 | MODIFIED**

ILSAPP: Appellant appealed from a Richmond County Supreme Court judgment convicting him, upon his guilty plea, of petit larceny. The Second Department modified by vacating the imposition of the mandatory surcharge and fee, in the interest of justice and on consent of the prosecution, and otherwise af-

firmed. CPL § 420.35(2-a) permits the waiver of surcharges and fees where appellant was under 21 years old at the time of the offense. The Legal Aid Society of NYC (Mimi Lei, of counsel) represented Barnett. (Supreme Ct, Richmond Co)

**People v Clark, 2026 NY Slip Op 02414
(2nd Dept 4/22/2026)****RIGHT TO COUNSEL - Effective Assistance
ORDER OF PROOF - Re-Opening Suppression Hearing**

LASJRP: The Second Department holds that defendant was denied the effective assistance of counsel when defense counsel failed to move to reopen the pretrial suppression hearing after an individual had testified, during the trial, that he had told the police that the voice of the alleged kidnapper, who the individual had heard speaking on the telephone, was “possibly” that of defendant, and the individual also admitted to testifying before the grand jury that he identified the voice after being shown a photograph of defendant. The police testimony at the pretrial suppression hearing regarding the same individual’s identification of defendant’s voice, which formed the basis for defendant’s arrest, was more definitive and unequivocal, and did not involve the viewing of a photograph.

The reliability of the witness’s identification of defendant’s voice as that of one of the perpetrators, which primarily formed the basis for defendant’s arrest, was called into question by that witness’s trial testimony, and an issue of fact was raised regarding whether there was probable cause for defendant’s arrest. (Supreme Ct, Queens Co)

People v Ferraro, 248 AD3d 1134 (2nd Dept 4/22/2026)**INVALID APPEAL WAIVER | WRITTEN WAIVER
MISLEADING | ABSOLUTE BAR | AFFIRMED**

ILSAPP: Appellant appealed from a Queens County Supreme Court judgment (Holder, J.) convicting him, upon his guilty plea, of criminal possession of a firearm. The Second Department affirmed but found the appeal waiver invalid. Appellant’s written waiver “misstated the applicable law and was misleading and further misstated that [appellant] was giving up the right to assigned counsel and postconviction remedies.” Further, considering appellant’s “lack of experience with the criminal justice system,” and the court’s misstatement that appellant’s “conviction and sentence will be final,” the oral colloquy “was insufficient to cure the defects of the written waiver.” The Legal Aid Society of NYC (Natalie Rea, of counsel) represented Ferraro. (Supreme Ct, Queens Co)

**Matter of Gabriel G., 2026 NY Slip Op 02403
(2nd Dept 4/22/2026)****SPEEDY TRIAL - Constitutional Due Process**

LASJRP: This matter, which began as a juvenile offender proceeding, arises from respondent’s theft of a cell phone when he was 14 years old. Three days after the theft, the victim iden-

Second Department *continued*

tified respondent in a photo array. Respondent was arrested five months later.

The Second Department holds that respondent was not denied due process by the five-month delay. (Family Ct, Kings Co)

**Matter of Glantz v Kadoch, 248 AD3d 1115
(2nd Dept 4/22/2026)**

**CUSTODY | CHILD SUPPORT ARREARS | HEARING
REQUIREMENT | TIMELINESS OF APPEAL |
REVERSED & REMITTED**

ILSAPP: Father appealed from a Kings County Supreme Court (IDV Part) order summarily granting mother's petition for sole legal and physical custody and directing payment of \$3,600 in temporary child support arrears. The Second Department reversed and remitted for a hearing and new determination. The lower court "erred in making a final custody determination without a hearing" and in directing the father to pay temporary child support arrears. Although the married parties had lived separately for 6 years at the time of the petition's filing, the court should have "clearly articulate[d] which factors were material to its determination." Consequently, the matter was remitted for a best interests hearing. Further, the AFC's contention that father's appeal was untimely lacked merit in light of the lack of evidence in the record showing that father was served with the Supreme Court order. Geanine Towers represented Kadoch. (Supreme Ct, Kings Co)

**Matter of Inzinna v Inzinna, 248 AD3d 1119
(2nd Dept 4/22/2026)**

**CHILD SUPPORT | DEFERRED INCOME NOT COUNTED |
IMPROPERLY IMPUTED INCOME | REVERSED & REMITTED**
ILSAPP: Appellant mother appealed from a Suffolk County Family Court order denying her objections to a Support Magistrate's order of child support issued after a hearing. The Second Department reversed, with costs, and remitted for a new child support calculation. The Family Court erred in denying appellant's objections because the Support Magistrate failed to include father's deferred income in the support calculation. Further, "[t]he Support Magistrate improvidently exercised her discretion in imputing additional income to the mother in excess of her reported income." As such, new determinations of the parties' combined annual income and child support obligations were necessary. Wand & Goody, LLP (Jennifer H. Goody, of counsel) represented appellant. (Family Ct, Suffolk Co)

**Matter of Jayceon H., 248 AD3d 1116 (2nd Dept 4/22/2026)
ABUSE/NEGLECT - Visitation Orders
VISITATION - Delegation Of Authority**

LASJRP: The Second Department, noting that it has made clear in other appeals that a court may not delegate its authority in

such a way as to permit a determination of parental access to be made by either a therapist, a parent, or the subject children, now concludes that to the extent that its ruling in *Matter of Victoria P.* (121 A.D.3d 1006) stands for the proposition that a court in a proceeding pursuant to FCA Article Ten may delegate its authority to determine issues of parental access to an agency, that case should no longer be followed.

Here, the Family Court erred by delegating to ACS the authority to determine the mother's therapeutic supervised parental access with the child. The case is remitted to the Family Court to determine whether the mother shall have therapeutic supervised parental access with the child, and, if so, to set forth a schedule for such parental access.

The JRP appeals attorney was Claire Merkine. (Family Ct, Kings Co)

**People v Latouche, 248 AD3d 1138 (2nd Dept 4/22/2026)
DVSJA | SUMMARY DENIAL PROPER | TEMPORAL NEXUS |
DENIAL MUST BE WITHOUT PREJUDICE | MODIFIED**

ILSAPP: Appellant appealed from a Rockland County Court order summarily denying his motion for resentencing pursuant to the Domestic Violence Survivors [Justice] Act (DVSJA). The Second Department modified the order to specify that the motion for DVSJA resentencing was denied "without prejudice" and otherwise affirmed. The court found that appellant's proffered evidence—a presentence report and "affidavits from his sister and a childhood friend, which offered only vague allegations of abuse, and provided no timeline as to the incidents"—did not satisfy the corroboration requirement, pursuant to CPL § 440.47(2)(c) insofar as they did not corroborate that he was the victim of "substantial abuse at the time that he committed the subject offenses." However, CPL § 440.47(2)(d) provides that if the court denies the motion for insufficient corroboration, "the motion should be denied 'without prejudice.'" Warren S. Hecht represented Latouche.

**People v Rahkeem S., 248 AD3d 1142 (2nd Dept 4/22/2026)
SURCHARGES & FEES | RETROACTIVE APPLICATION | YO |
MODIFIED**

ILSAPP: Appellant appealed from a Kings County Supreme Court judgment adjudicating him a youthful offender upon his guilty plea to second-degree attempted robbery. The Second Department modified by vacating the imposition of the mandatory surcharge and fee, "in light of the retroactive application of amendments repealing the imposition of mandatory surcharges and crime victim assistance fees for youthful offenders," under former PL § 60.35(10). The Legal Aid Society of NYC (Mimi Lei, of counsel) represented Rahkeem S. (Supreme Ct, Kings Co)

**People v Williams, 248 AD3d 1143 (2nd Dept 4/22/2026)
EXCESSIVE SENTENCE | MODIFIED**

ILSAPP: Appellant appealed from a Kings County Supreme

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Court judgment convicting him, upon a jury verdict, of first-degree manslaughter and sentencing him to a determinate term of 15 years' imprisonment followed by 5 years' PRS. The Second Department modified, in the interest of justice, by reducing the sentence to a determinate term of 8 years' imprisonment followed by 5 years' PRS. The sentence imposed was excessive. Appellate Advocates & White & Case LLP (Courtney Andrews, Abigail Warner Mahoney, Olivia Hussey, and Jacob Showers, of counsel) represented Williams. (Supreme Ct, Kings Co)

**People v Zino, 248 AD3d 1144 (2nd Dept 4/22/2026)
PROSECUTION'S APPEAL | LEGALLY INSUFFICIENT GRAND
JURY EVIDENCE | AFFIRMED**

ILSAPP: [The prosecution] appealed from a Queens County Supreme Court order granting his motion to dismiss the counts of the indictment charging him with criminally negligent homicide and reckless driving on the ground that the grand jury evidence was legally insufficient. The Second Department affirmed. "The evidence, viewed in the light most favorable to the [prosecution], was legally insufficient to "demonstrate that [appellant's] conduct rose to the level of moral blameworthiness required to sustain a charge of criminally negligent homicide," or to "support the charge that [appellant] operated his vehicle 'under such circumstances as to show a reckless disregard of the consequences.'" Nicholas Dayan represented Zino. (Supreme Ct, Queens Co)

Third Department

In the online version of the *REPORT*, the name of each case summarized is hyperlinked to the opinion provided on the website of the New York Official Reports, www.nycourts.gov/reporter/Decisions.htm.

**People v Butler, 246 AD3d 1153 (3rd Dept 2/5/2026)
SORA | LACK OF NOTICE OF *SUA SPONTE* POINTS |
CLERICAL ERROR | HARMLESS | AFFIRMED**

ILSAPP: Appellant appealed from an Albany County Court judgment classifying him as a level two sex offender pursuant to SORA. The Third Department affirmed. As conceded by the prosecution, County Court deprived appellant of a meaningful opportunity to respond to the court's assessment when it *sua sponte* assessed appellant an additional 25 points (30 total) under risk factor 9 (number and nature of prior crimes). However, the additional assessment appeared to be a clerical error, as the court did not include the additional 25 points in its total assessment of points. Therefore the error was harmless. (County Ct, Albany Co)

**People v Sweeny, 246 AD3d 1163 (3rd Dept 2/5/2026)
VALID WAIVER OF APPEAL | ORAL COLLOQUY OVERCAME
DEFICIENT WRITTEN WAIVER | AFFIRMED**

ILSAPP: Appellant appealed from a Saratoga County Court judgment convicting him, upon his guilty plea, of second-degree CPW. The Third Department affirmed and found that appellant knowingly, intelligently, and voluntarily waived his right to appeal. Although the written waiver contained overbroad and inaccurate language, "the court's oral colloquy cured this defect by ensuring that [appellant] understood that some appellate review survived." Appellant's remaining arguments were either without merit or precluded by the valid appeal waiver. (County Ct, Saratoga Co)

**People v Woody, 246 AD3d 1160 (3rd Dept 2/5/2026)
VALID WAIVER OF APPEAL | ORAL COLLOQUY OVERCAME
DEFICIENT WRITTEN WAIVER | AFFIRMED**

ILSAPP: Appellant appealed from an Albany County Court judgment convicting him, upon his guilty plea, of second-degree attempted CPW. The Third Department affirmed and found that appellant knowingly, intelligently, and voluntarily waived his right to appeal. Although the written waiver was overbroad, County Court's oral colloquy, which "expressly delineated the appellate issues that would survive the waiver, was sufficient to overcome the deficiencies in the written waiver and to ensure that [appellant] understood that some appellate review survived." Appellant's remaining arguments were either precluded by his valid appeal waiver, forfeited by his guilty plea, or without merit. (County Ct, Albany Co)

**People v Davis, 246 AD3d 1188 (3rd Dept 2/11/2026)
SENTENCE - Defendant's Violation Of Plea Bargain**

LASJRP: The Third Department, after noting that defendant's contention that the sentencing court improperly imposed an enhanced sentence based upon his violation of the condition that he be truthful with the Department of Probation is not precluded by his appeal waiver, upholds the sentencing court's determination that defendant violated the plea condition and that an enhanced sentence was warranted.

Defendant stated that a discussion with the victim - with whom defendant shared two children - escalated and that the victim threatened to take the children and leave, which resulted in defendant preventing the victim from leaving the bedroom that they were in. A review of an audio recording establishes that the victim, numerous times, assured defendant that he could see the children whenever he wanted. Defendant also stated during the probation interview that although he was unloading a shotgun when he was arguing with the victim, he was unaware that the presence of the shotgun made the victim feel unsafe, which is at odds with his admission during the plea that he restrained the victim and exposed her to a risk of serious injury while pointing a loaded, operable shotgun at her

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and threatening to kill her and their children with it, and with the audio recording, which captures the sound of a gun cocking followed by defendant's taunts to the victim as to whether she is "scared now." Defendant neglected to mention in his version of the underlying offense that he repeatedly threatened to kill the victim, himself and their children. The probation officer testified that, although defendant did not deny any specific conduct, he seemed to be "glossing over certain events." (County Ct, Sullivan Co)

Matter of Alexander I. v Allison I., 246 AD3d 1230
(3rd Dept 2/19/2026)

**CUSTODY & VISITATION | PARENTAL ACCESS SCHEDULE |
 MODIFIED & REMITTED**

ILSAPP: Appellant appealed from a Montgomery County Family Court order awarding the parents joint legal custody, with primary physical residency for the mother and parenting time for the father on alternating weekends and shared holidays. The Third Department modified with respect to the father's parenting time and otherwise affirmed. Alternating weekend visitation "failed to provide him with meaningful and frequent access under the circumstances." Further, the order placing the entire burden of transportation to and from visits on the father was unsupported by the record, particularly since it appeared that the mother obtained a vehicle during the proceedings or could have made a financial contribution to the transportation. Due to the passage of time since the order on appeal, the Third Department remitted to Family Court for a determination on increased parenting time for the father, as well as for the court to equitably divide transportation responsibilities between the parents. Matthew C. Hug represented Alexander I. (Family Ct, Montgomery Co)

Matter of Janey B. v Jill C., 246 AD3d 1261
(3rd Dept 2/19/2026)
APPEAL - Timeliness

LASJRP: In this FCA Article Six proceeding, the Third Department dismisses the mother's appeal as untimely taken beyond the 35-day deadline where the order appealed from was mailed to the mother and emailed to the mother's counsel on the day it was entered, August 29, 2024; the last day to take an appeal was October 3, 2024; and although the mother's notice of appeal was dated October 2, 2024, the affirmation of service reveals that the notice of appeal was served, and filed with the Family Court clerk, on October 4, 2024.

The statutory time bar is absolute and not subject to extension, and thus the Court lacks jurisdiction to entertain the appeal. (Family Ct, Broome Co)

Matter of Jasic UU., 246 AD3d 1271 (3rd Dept 2/19/2026)
ABUSE/NEGLECT - "Paranoid" Behavior
APPEAL - Preservation

LASJRP: The Third Department upholds a finding of neglect where the root cause of the mother's behavior - be it mental health or drug related - is not borne out by the record, but petitioner proved that the mother was unduly paranoid, as demonstrated by her unsupported accusations that the older child stole her medication and hacked her cellphone, and the mother stated that he was not welcome to return home and asked petitioner to take custody over him rather than utilize offered services; petitioner also proved that the mother refused to allow petitioner to speak with the younger child, despite her own concern that the younger child had been sexually abused; the mother was unable to recognize how these actions impacted the children; and the older child expressed an intent to self-harm, which resulted in him being taken to a psychiatric hospital.

The mother did not seek to remove the attorney for the child before the Family Court, nor did she allege that the AFC was improperly substituting judgment. As a result, this contention is unpreserved. (Family Ct, Tioga Co)

Matter of Natalie F. v Nicholas G., 246 AD3d 1275
(3rd Dept 2/19/2026)
VISITATION - Schedule
- Travel Issues

LASJRP: The Third Department agrees with the mother that where her visitation petition sought greater clarity and the court obliged as to certain holidays, the court erred in excluding other holidays and important milestones. Any order dealing with parenting time must unfortunately be all-encompassing and specific in order to avoid further acrimony between the parties and provide the child with meaningful time with both parents. The case is remitted for the Family Court to craft a definitive parenting time schedule that encompasses the holidays and time periods that the parties identified as meaningful and in dispute.

The Court also finds error in a provision[,], which was born of the mother's stated desire to travel to Florida with the child to visit with her maternal relatives[,], that requires each party to obtain the other's consent before traveling out of state with the child. There is no indication that the mother presented a threat of absconding with the child and, given the acrimony between the parties, imposing such a condition would likely impede the child's ability to maintain a relationship with her maternal relatives. (Family Ct, Delaware Co)

People v Stanley, 246 AD3d 1218 (3rd Dept 2/19/2026)
30.30 | DUE DILIGENCE DETERMINATION REQUIRED |
HELD IN ABEYANCE

ILSAPP: Appellant appealed from an Albany County Supreme Court judgment convicting her, upon a jury verdict, of second-

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degree conspiracy, third-degree CPCS (two counts) and EWAC (two counts). The Third Department held the appeal in abeyance and remitted to Supreme Court to determine whether the prosecution exercised due diligence in fulfilling their discovery obligations. “Although belated disclosure does not, standing alone render a statement of readiness illusory, late disclosure provided in good faith cannot cure a failure to exercise diligence in the first instance.” During trial, it was revealed for the first time during cross-examination that an arresting officer had an active body-worn camera during appellant’s arrest. Appellant challenged the prosecution’s COC and moved for a mistrial, but Supreme Court denied the motion and instead offered remedial measures. Remittal was required because the trial court did not determine whether the prosecution’s failure to timely disclose the body-worn camera footage rendered the initial COC illusory. Steven M. Sharp represented Stanley. (Supreme Ct, Albany Co)

**Matter of Abigail X., 246 AD3d 1345 (3rd Dept 2/26/2026)
NAME CHANGE**

LASJRP: Petitioner is a transgender individual who commenced this Civil Rights Law Article Six proceeding to change his name and to seal the court record of this proceeding. The Supreme Court granted the name change but denied his sealing request, finding that a list of “public interest concerns” outweighed petitioner’s safety concerns.

The Third Department grants the sealing request. Petitioner indicated that he was seeking to change his name to one that reflects his male gender identity in conformance with the name he uses in his personal and professional life. Petitioner also expressed fear that exposure to the records from this proceeding would effectively expose his transgender status and expose him to increased risk for hate crimes, harassment and other discrimination. (Supreme Ct, Saratoga Co)

**People v Bessette, 246 AD3d 1310 (3rd Dept 2/26/2026)
IMPEACHMENT - Witness’s Bad Acts/Mental Condition**

LASJRP: In this child sexual assault prosecution, the Third Department finds no error in the trial court’s limitations on cross-examination, noting, with respect to unsubstantiated allegations that the investigating officer had struck a child, that neither incident resulted in discipline or criminal charges and neither directly implicated the officer’s veracity; and that defendant offered no competent evidence supporting the premise that the victim’s mother’s mental health condition had a bearing on her ability to tell the truth. (County Ct, Albany Co)

**People v Cox, 246 AD3d 1308 (3rd Dept 2/26/2026)
ADMISSIBILITY OF PHOTOS OF CW INJURIES | RELEVANCE
NOT SHOWN | HARMLESS ERROR | AFFIRMED**

ILSAPP: Appellant appealed from a Rensselaer County Court

judgment convicting him, following a jury verdict, of depraved indifference murder (two counts) and depraved indifference assault. The Third Department affirmed. The trial evidence established that appellant had caused the death of his girlfriend’s 6-year-old son by hypothermia when appellant punished the child by locking him on the porch overnight during the winter. Appellant challenged several photographs of the decedent admitted into evidence. Accurate photographs of a victim are admissible, “despite their potential inflammatory effect, if they tend to prove or disprove a disputed or material issue, to illustrate or elucidate other relevant evidence, or to corroborate or disprove some other evidence offered or to be offered.” Here, it was proper to admit a picture of the intubated victim, as it was relevant to the seriousness of the injuries, “not introduced solely to inflame the jury’s emotions,” and was accompanied by “multiple cautionary instructions.” However, four photographs showing an abrasion on the child’s arm, were inadmissible because they “depicted an injury that was not shown to be connected to the charged crimes” and therefore were not relevant. The only testimony about the arm injury was from the detective who took the photographs, who had no knowledge about how the injury occurred. However, the error was harmless since the inadmissible photos “were not graphic in nature” and showed only a “minor injury,” and because other proof of guilt was overwhelming. (County Ct, Rensselaer Co)

**People v Lerario, 246 AD3d 1281 (3rd Dept 2/26/2026)
CONFESSIONS - Custody/Statements At Hospital**

LASJRP: The Third Department finds error, albeit harmless, in the denial of suppression of statements defendant made at the emergency wing of a hospital prior to the administration of Miranda warnings, concluding that defendant was in custody.

Defendant, who was standing or sitting with a wall behind him, was surrounded by three to four uniformed police officers. Although officers testified that defendant’s movements were not restricted, he was prevented from leaving the hospital to retrieve his cell phone and was told on multiple occasions to sit down if he stood up. While the questions asked by the police officers may have started in an investigatory fashion, as the encounter continued the questions became more accusatory in tone, including one officer asking defendant repeatedly if he shot the victim. (Supreme Ct, Saratoga Co)

**Matter of District Attorney of Columbia County v Nussinow,
246 AD3d 1358 (3rd Dept 2/26/2026)****APPEALS FROM TOWN COURT ORDERS | LACK OF AD
JURISDICTION | ANIMAL FORFEITURE | DISMISSED**

ILSAPP: In an animal forfeiture proceeding, appellant appealed from two orders of the Town Court of Germantown (1) requiring appellant to post security to Lucky Orphans Horse Rescue, pursuant to Agriculture and Markets Law § 373(6), for the costs of housing for 30 days horses who were seized from appellant in an animal neglect action, and (2) granting the forfeiture of the

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horses to Lucky Orphans. The Third Department dismissed the appeal, holding that the orders of the Town Court were not appealable to the Appellate Division. “Rather, the proper procedure would be...to appeal those orders to County Court,” pursuant to Uniform Justice Court Act § 1701 and CPLR articles 55 and 78. (Town Ct [Germantown], Colombia Co)

Matter of The People of the State of New York v Commons**West, LLC, et al., 2026 NY Slip Op 01253****(3rd Dept 3/5/2026)****SEARCH AND SEIZURE - Administrative Searches
HOUSING BENEFITS**

LASJRP: The New York Legislature, recognizing that landlords’ refusal to accept Section 8 housing vouchers is a significant barrier to the program, passed a law prohibiting discrimination against potential tenants based on their source of income - effectively requiring landlords to participate in the Section 8 program. Expanding voucher acceptance is essential to achieving the remedial purpose of the federal program upon which hundreds of thousands of New Yorkers rely. Source-of-income discrimination is often a proxy for discrimination against other protected classes.

However, noting that landlords are now forced to consent to governmental searches of their rental properties and records, the Third Department concludes that the Supreme Court properly declared the source-of-income provision in Executive Law § 296(5)(a)(1) facially unconstitutional to the extent that it makes it an unlawful discriminatory practice to refuse to rent or lease housing accommodations to any person, or group of persons, because their source of income includes Section 8 vouchers. The place and scope of a permissible search are exceedingly broad, and the inspection scheme does not provide adequate safeguards. (Supreme Ct, Tompkins Co)

People v Condon, 247 AD3d 1265 (3rd Dept 3/5/2026)**INVALID APPEAL WAIVER | MISCHARACTERIZED &
OVERBROAD | AFFIRMED**

ILSAPP: Appellant appealed from a Delaware County Court (Getman, J.) judgment convicting him, upon a guilty plea, of first-degree criminal sexual act and sentencing him, as a second felony offender, to 20 years’ imprisonment plus 10 years’ PRS, to run concurrently with a sentence appellant was already serving. The Third Department affirmed but found the appeal waiver invalid. “Both the oral colloquy and the written waiver used overbroad language that mischaracterized the scope of the rights to be waived.” Specifically, during the plea colloquy, County Court stated that the waiver encompassed “challenges to the voluntariness of the appeal waiver and the legality of the sentence,” and the written waiver similarly stated that appellant was waving the right to appeal his sentence.

Nonetheless, appellant’s sentence was not excessive. Angela Kelley represented Condon. (County Ct, Delaware Co)

People v Daniels, 247 AD3d 1257 (3rd Dept 3/5/2026)**SEARCH AND SEIZURE - Stop And Frisk**

LASJRP: The Third Department upholds the denial of suppression where an investigator testified that at the time he frisked defendant, he was aware that a confidential informant informed the police that defendant was in possession of drugs and a handgun; he felt a hard cylindrical object in defendant’s pocket and was unsure whether it was the barrel of a gun; and without reaching into defendant’s pocket, he manipulated the cylinder to the top of the pocket where he observed it was a vial containing cocaine. (County Ct, Columbia Co)

People v Gordon, 247 AD3d 1268 (3rd Dept 3/5/2026)**GUILTY PLEA | ENHANCED SENTENCE IMPROPER |
REMITTED**

ILSAPP: Appellant appealed from a Washington County Court judgment convicting him, upon a guilty plea, of second-degree falsely reporting an incident and imposing an enhanced sentence of 3 years’ imprisonment plus 5 years’ PRS. The Third Department vacated the sentence and remitted to County Court “to either impose the agreed-upon sentence [of 2 years’ imprisonment plus 5 years’ PRS] or provide [appellant] with an opportunity to withdraw his guilty plea.” As the prosecution conceded, County Court failed to “specifically inform [appellant] as part of the *Parker* admonishment that a consequence of failing to appear for sentencing was the imposition of a greater sentence.” Accordingly, the court erred in imposing an enhanced sentence on that ground without first giving appellant the opportunity to withdraw his plea. The court also rejected the prosecution’s argument that County Court also could have imposed an enhanced sentence based on appellant’s commission of a new offense between plea and sentence, an enhancement of which appellant was properly warned at the time of plea. The new charge, however, was not the basis for the enhancement, and County Court would have had to give appellant the opportunity for an *Outley* hearing if that had been the case. G. Scott Walling represented Gordon. (County Ct, Washington Co)

People v Jones, 247 AD3d 1266 (3rd Dept 3/5/2026)**SEARCH AND SEIZURE - Auto Stop/Racial Profiling
- Hearing/Burdens**

LASJRP: Although the Third Department affirmed the judgment of conviction upon defendant’s direct appeal, the Court reversed an order that had summarily denied his motion to vacate the conviction and remitted the matter for a hearing on the issue of whether the traffic stop that led to defendant’s arrest was based upon racial profiling. The court below denied defendant’s motion.

Third Department *continued*

The Third Department affirms, noting, *inter alia*, that the social media posts made by the officer who effectuated the arrest, made three years after the incident in question, do not establish by a preponderance of the evidence that the stop was based upon racial profiling, particularly in light of the fact that a lieutenant told the officer to effectuate the stop. (County Ct, Chemung Co)

**Michael T. v Rida S., 247 AD3d 1280 (3rd Dept 3/5/2026)
CUSTODY - International Travel Restriction**

LASJRP: In this divorce proceeding, the Third Department, while upholding an order awarding the parties joint legal custody with equal parenting time, also upholds a prohibition on the child's international travel.

The wife took the child to Chicago without notifying the husband, which, along with evidence of her ability to work remotely and limited local ties, provided a sufficient basis to conclude that the wife was a possible flight risk. Although fostering the child's connection with her Pakistani heritage and the mother's family was in the child's best interests, there was also evidence that the wife's parents, who live in Pakistan, were able to visit the child in the United States, and the wife's siblings lived in the United States as well. (Supreme Ct, Tompkins Co)

**Matter of Alexia KK., 247 AD3d 1383 (3rd Dept 3/19/2026)
NEGLECT | DRUGS IN VEHICLE | AFFIRMED | DISSENT**

ILSAPP: Appellant parent appealed from an Ulster County Family Court Order finding that he neglected the child. The Third Department affirmed, with two justices dissenting. The majority agreed with Family Court's conclusion that the quantity of packaged drugs found in the parent's car during a traffic stop, where the child was in the car, supported an inference that he was selling drugs in the child's presence. The dissent emphasized that, while the record supported a finding that the parent intended to offer drugs for sale, there was no evidence supporting a finding that he was doing so in the child's presence, describing that conclusion as "too tenuous an inference to be drawn from the evidence adduced at the fact-finding hearing." Further, the drugs were not within the child's reach, nor was the parent impaired at the time they were discovered. (Family Ct, Ulster Co)

**People v Devon Y., 247 AD3d 1367 (3rd Dept 3/19/2026)
DVSJA | TEMPORAL NEXUS | ABUSE & OFFENSE OCCURRED
AS A MINOR | AFFIRMED | DISSENT**

ILSAPP: Appellant appealed from an Ulster County Court order denying his motion under the Domestic Violence Survivors Justice Act (DVSJA) seeking resentencing on a 2009 robbery offense, when he was 16, for which he received a 25-year sen-

tence. The Third Department affirmed, with two justices dissenting. The majority held that appellant had not established that he was a victim of domestic violence "at the time of the offense," since somewhere between 2 and 4 years had elapsed since the last instance of physical abuse by appellant's mother. The majority rejected an approach to the DVSJA's first element that would account for "ongoing harmful effects of substantial abuse" that occurred in the past, while acknowledging appellant "endured unspeakable abuse during his childhood" that was physical, sexual, and psychological. Another approach, the majority reasoned, would ignore the statute's temporal language. The dissent (Aarons and Reynolds Fitzgerald, JJ.) would have found that the ongoing psychological effects of appellant's lifetime of abuse satisfied the temporal nexus requirement of the DVSJA's first prong and would have remitted for consideration of the statute's second and third prongs. The dissenters emphasized that appellant still had an "ongoing relationship" with one of his abusers—his mother—at the time of the offense, and that he was homeless because he had fled the abusive household. The dissent also urged a different approach for criminalized survivors who are minors, observing that "the temporal-nexus doctrine emerged in cases involving adult defendants," while appellant's "abuse and offense occurred before he reached adulthood." Given the "remedial nature" of the DVSJA, the dissent opined that it should be "construed broadly to give effect to its purpose," concluding that "the implied temporal-nexus element may be satisfied not only with ongoing abuse or abusive relationships, but also based upon the ongoing harmful effects of substantial abuse." (County Ct, Ulster Co)

**People v Donovan QQ., 247 AD3d 1352 (3rd Dept 3/19/2026)
ADOLESCENT OFFENDERS - Removal**

LASJRP: The Third Department finds no error where the court declined to transfer jurisdiction of the adolescent offender action to Family Court - an issue which survives despite the validity of defendant's appeal waiver.

The People presented evidence that defendant caused life-threatening injuries - multiple deep lacerations and significant blood loss, for which the victim required emergency room treatment, multiple surgeries and a prolonged hospital stay. DNA evidence linked defendant to the weapon used in the attack. (County Ct, Schenectady Co)

**People v Faubert, 247 AD3d 1366 (3rd Dept 3/19/2026)
SCI | WAIVER OF INDICTMENT PROHIBITED WHEN
CHARGED WITH A-1 FELONY | REVERSED**

ILSAPP: Appellant appealed from a Franklin County Court judgment convicting her, upon a plea of guilty, of first-degree assault. The Third Department reversed, dismissed the SCI, and remitted to County Court. As the prosecution conceded, appellant's waiver of indictment and SCI were jurisdictionally

Third Department *continued*

defective because the SCI charged her with first-degree kidnapping, a class A-1 felony punishable by an indeterminate sentence with a mandatory maximum term of life imprisonment. Accordingly, under CPL § 195.10, appellant's waiver of indictment was expressly prohibited and invalid, rendering her guilty plea unauthorized. Donnial K. Hinds represented Faubert. (County Ct, Franklin Co)

People v Bryan, 247 AD3d 1414 (3rd Dept 3/26/2026)
SUPPLEMENTAL SEX OFFENDER VICTIM FEE IMPROPER |
MODIFIED

ILSAPP: Appellant appealed from a Rensselaer County Supreme Court judgment convicting him, upon his guilty plea, of first-degree disseminating indecent materials to minors. The Third Department modified by vacating the supplemental sex offender victim fee, in the interest of justice, and, as modified affirmed. Appellant was not convicted of one of the offenses designated in Penal Law § 60.35(1)(b) and should not have been directed to pay the fee required by that provision. Juan Luis Jaramillo represented Bryan. (Supreme Ct, Rensselaer Co)

Matter of Anna D. v David E., 248 AD3d 1403
(3rd Dept 4/2/2026)

FAMILY OFFENSE | DISMISSAL FOR FAILURE TO STATE
CAUSE OF ACTION | PATTERN OF UNWANTED CONDUCT
MAY BE HARASSMENT 2ND | REVERSED & REMITTED

ILSAPP: Mother appealed from a Chemung County Family Court order dismissing her family offense petition. The Third Department reversed in part. In her petition, mother alleged that the father committed the family offenses of stalking and harassment by repeatedly coming to her home and sending repeated emails and text messages "inappropriately attempt[ing] to relitigate the end of their marriage," despite the mother's requests that he stop. The court held that the petition did not make out a cause of action for stalking. However, the harassment charge was facially sufficient: the father's repeated attempts to contact the mother despite her requests that he stop would "permit a factfinder to infer the requisite intent to harass, annoy, or alarm and to conclude that the father's alleged conduct served no legitimate purpose." Legal Assistance of Western New York (Sarah J. Fildes, of counsel) represented Anna D. (Family Ct, Chemung Co)

People v Bowden, 248 AD3d 1337 (3rd Dept 4/2/2026)
ASSAULT/GANG ASSAULT - Acting In Concert
POSSESSION OF A WEAPON

LASJRP: Defendant was the only individual seen before the shooting with a gun - a weapon consistent with the shell casing found at the scene. Video evidence confirmed his presence with the co-defendants outside the apartment before the shooting.

The People's theory was that during a brief huddle, defendant provided his gun to the shooter.

The Third Department concludes that the evidence was legally sufficient, but reverses defendant's convictions for assault in the first degree, gang assault in the second degree, burglary in the second degree and criminal possession of a weapon in the second degree, concluding that the verdict was against the weight of the evidence. The video footage is dark and pixelated and someone's body obscures part of the interaction, making it impossible to discern whether defendant and the co-defendant exchanged a handgun. The co-defendant's lack of knowledge that defendant had been observed earlier with a gun, combined with testimony that the co-defendant threatened to return and shoot the victim, creates the reasonable inference that he already had access to a gun of his own.

Since the evidence fails to demonstrate that the shooting was committed with the same gun defendant had been seen with, the record also fails to establish that defendant intended to use the gun unlawfully against another, or that the gun was operable. (County Ct, Schenectady Co)

Matter of Joshua X. v Alexandria Y., 248 AD3d 1358
(3rd Dept 4/2/2026)

CUSTODY MODIFICATION | CHANGE OF CIRCUMSTANCES |
REVERSED & REMITTED TO NEW JUDGE

ILSAPP: Father appealed from a Chemung County Family Court (Campanella, J.) order granting mother's motion to dismiss his custody modification petition. The Third Department reversed and remitted to Family Court for further proceedings on the petition before a different judge. Family Court erred in granting the motion to dismiss, particularly since the court was obligated to give the father the benefit of "every favorable inference that could reasonably be drawn from [the] evidence, including resolving all credibility questions in [his] favor." Here, father demonstrated a sufficient change of circumstances warranting reconsideration of the custody order, including a change in his military job, which no longer required deployment, the mother's remarriage and a subsequent deterioration of the relationship between the parents, and the stress of the mother's new household composition on the younger child, prompting him to ask to live with his father. The Third Department remitted for further proceedings, because the record did not permit it to determine which custody arrangement would be in the child's best interests. Jane M. Bloom represented Joshua X. (Family Ct, Chemung Co)

Matter of Kareem E., 248 AD3d 1369 (3rd Dept 4/2/2026)
ASSAULT - Attempts
RESISTING ARREST
RIOT

LASJRP: The Third Department dismisses as facially insuf-

Third Department *continued*

ficient a charge of riot in the second degree where the supporting deposition of the police lieutenant who responded to the incident stated only that he observed “several” individuals fighting in the street and the parking lot; that respondent was “significantly larger” and repeatedly punching another individual in the head who “did not appear to be able to defend himself”; and that respondent was “accompanied by” eight other individuals. The allegations in the petition do not establish that respondent and four other individuals simultaneously engaged in tumultuous and violent conduct.

A 3-judge majority upholds findings of attempted assault in the third degree and resisting arrest. The police lieutenant testified that he attempted to break up a fight involving respondent - who appeared to be “much larger” and “was attacking and punching” another person - and that he advised respondent that he was under arrest and to put his hands behind his back, but respondent refused to do so. Body camera video depicts respondent and the other person exchanging punches, with respondent landing several punches to the face, head or neck area of the other individual, and the footage shows the lieutenant holding respondent’s arms behind his back when respondent suddenly pulls his arms away and flails backwards, before both officers then push respondent to the ground to effectuate the arrest. Respondent came “dangerously close” to causing “substantial pain” to another person, and his actions provided probable cause for an arrest.

According to the two dissenting judges, the evidence was enough to put a justification defense into issue, and the finding as to attempted third-degree assault is against the weight of the evidence. Although the resisting arrest finding is not against the weight of the evidence, the dissenting judges would dismiss the resisting arrest count in furtherance of justice. (County Ct, Schenectady Co)

Matter of L. XX., 248 AD3d 1390 (3rd Dept 4/2/2026)**ABUSE/NEGLECT - Petition/Amendment
- Corroboration Of Child’s Out-of-Court Statements**

LASJRP: The Third Department rejects respondent mother’s contention that the Family Court failed to provide adequate notice before conforming the petition to proof about the alleged sexual abuse, noting that the Family Court’s finding that the mother “encouraged [the child] to talk to adult men” was fairly implied by the petition’s allegation that she “encouraged inappropriate intimate contact between” the child and the abuser.

The Court finds sufficient corroboration of the child’s out-of-court statements. The fifteen-year-old child became pregnant after sexual intercourse with the twenty-eight-year-old male living at the family’s apartment, which tends to support the

reliability of the child’s allegation that the mother encouraged her to sleep with her abuser. (Family Ct, Albany Co)

People v Oldorff, 2026 NY Slip Op 02004**(3rd Dept 4/2/2026)****PLEAS - Knowing, Intelligent & Voluntary**

LASJRP: Noting that certain statements defendant made during the plea colloquy triggered the narrow exception to the preservation requirement, the Third Department vacates defendant’s plea, concluding that the plea was not knowing, intelligent and voluntary.

The Court notes, *inter alia*, that defendant was twice determined to be incompetent to stand trial and had received four years of treatment before he was deemed competent, the plea court was aware of defendant’s intellectual disabilities, and the third psychiatric evaluation report indicates that defendant “achieved a [f]ull-[s]cale IQ of 59, indicative of abilities consistent with a [m]ild [i]ntellectual [d]isability,” “achieved an [a]daptive [b]ehavior [c]omposite of 68, consistent with [the] upper end of the ‘low’ range of daily living skills,” and was “rather immature in his understanding of the severity of his charges and the chances that he could have significant consequences — such as jail time”; and that during the third evaluation, defendant repeatedly alleged that his counsel had reassured him that he will not be going to jail and “express[ed] strongly held beliefs that he will not be sent to jail due to his personal circumstances of having a disability and being young when the offenses were allegedly committed.”

Under these circumstances, a more probing inquiry was warranted to ensure that defendant understood the constitutional rights he was waiving, given his significant intellectual disability. (County Ct, Schoharie Co)

Matter of Robert UU. v Phoebe VV, 248 AD3d 1405**(3rd Dept 4/2/2026)****CUSTODY - Appeal/Timeliness****- Right To Counsel/Effective Assistance**

LASJRP: In this custody proceeding, the Third Department dismisses the mother’s appeal where her notice of appeal was not timely filed because of a delay in the re-assignment of counsel and a breakdown in communications between the Public Defender’s Office and the mother after the assistant public defender assigned to the mother’s case resigned.

The mother’s contention that the Court should deem her appeal timely because she was deprived of the effective assistance of counsel when the assistant public defender failed to follow her instructions to file a notice of appeal if the Family Court did not grant her legal and primary physical custody of the child relies on facts not appearing on the face of the appellate record and must be raised in a motion for post-judgment relief under CPLR 5015. (Family Ct, Washington Co)

Third Department *continued***People v Cassell, 248 AD3d 1433 (3rd Dept 4/9/2026)
ANONYMOUS JURY UNWARRANTED | UNDETERMINED
SUPPRESSION MOTION | IGNITION INTERLOCK DEVICE
CONDITION ILLEGAL FOR DRUG IMPAIRMENT |
REVERSED & NEW TRIAL ORDERED**

ILSAPP: Appellant appealed from a Saratoga County Court judgment convicting him, following a jury trial, of aggravated driving while intoxicated with a child, driving while ability impaired by drugs, third-degree aggravated unlicensed operation of a motor vehicle, and EWAC, and sentencing him to an aggregate indeterminate prison term of 1 1/3 to 4 years. The Third Department reversed and remitted for a new trial. As the prosecution conceded, County Court violated CPL § 270.15 when it empaneled an anonymous jury without making any findings on the record or articulating any case-specific justification for doing so, saying only that juror names were withheld “because of confidentiality.” The record did “not reflect any concerns regarding juror safety, intimidation or interference nor any circumstances that would otherwise warrant the use of an anonymous jury.” Though this was not a mode of proceedings error and unpreserved, the Third Department reached the issue in the interest of justice. In anticipation of a new trial, the Third Department also held that County Court must make a ruling, as an initial matter, on appellant’s *Mapp/Dunaway* motion, which was never determined. In addition, since the allegations of impairment were based on consumption of Suboxone, the sentencing condition of installing an ignition interlock device was “illegal, as an alcohol-related offense was not an essential element of any conviction.” John B. Casey represented Cassell, (County Ct, Saratoga Co)

**People v Duplessis, 248 AD3d 1419 (3rd Dept 4/9/2026)
BATSON | STEPS TWO AND THREE IMPROPERLY MERGED |
INTEREST OF JUSTICE | HELD IN ABEYANCE & REMITTED**

ILSAPP: Appellant appealed from a Schenectady County Court judgment convicting him, following a jury trial, of third-degree CSCS (two counts) and third-degree CPCS (two counts). The Third Department withheld decision and remitted to County Court for the trial judge to complete step three of the *Batson* framework. County Court improperly merged steps two and three of the *Batson* inquiry when it accepted the prosecutor’s race-neutral explanation at step two without completing step three. Specifically, the court did not allow defense counsel to argue that the prosecutor’s stated reason was pretextual and then make an ultimate finding on discriminatory intent. Although defense counsel did not preserve the issue, “given the magnitude of the error,” the Third Department took “corrective action in the interest of justice because the process here was woefully inadequate to satisfy the safeguards enshrined by *Batson*.” Martin J. McGuinness represented Duplessis. (County Ct, Schenectady Co)

**People v Santana, 248 AD3d 1429 (3rd Dept 4/9/2026)
BRUEN CONSTITUTIONAL CHALLENGE TO PL § 265.03 |
EXCESSIVE SENTENCE | MODIFIED**

ILSAPP: Appellant appealed from a Rensselaer County Court judgment convicting him, following a jury trial, of second-degree CPW and sentencing him to 12 years’ imprisonment plus 5 years’ PRS. The Third Department modified, in the interest of justice, by reducing the prison term to 8 years. The jury had acquitted appellant, who raised a justification defense, of the murder and assault charges. Further, appellant did not have a criminal history, accepted responsibility, and showed remorse. In a detailed analysis of an issue of first impression in the Third Department, the court rejected appellant’s facial and as-applied challenges to the constitutionality of PL § 265.03 (simple possession outside home or place of business). The court held that the “good moral character” requirement in PL § 400.00(1) (b)’s licensing scheme, amended in 2022 post-*Bruen*, is “sufficiently grounded” in the country’s “historical tradition of disarming individuals who would cause harm to others.” New York’s shift from a “may-issue” to a “shall-issue” licensing regime also reduced the discretion of licensing officials in compliance with *Bruen*, but threshold eligibility requirements, such as good moral character, are still permissible. Moreover, PL § 265.03 does not violate the Second Amendment as applied to appellant, since he did not have a gun license, a restriction validated by Justice Kavanaugh’s *Bruen* concurrence. Finally, the Third Department held that the legislature had the power to determine that unlicensed gun possession “outside the home poses a greater risk of danger than it does inside the home,” and therefore to penalize the former more severely. Steven M. Sharp represented Santana. (County Ct, Rensselaer Co)

**People v Zeoli, 248 AD3d 1422 (3rd Dept 4/9/2026)
EVIDENCE - Video Recording**

LASJRP: Defendant argues on appeal that the trial court should not have admitted video footage of the incident because the testimony from a detective, who recounted the manner in which he obtained the footage from a homeowner who maintained a surveillance system that captured the incident, was insufficient to independently establish the foundational requirements for admission.

The Third Department finds no error, concluding that although the appropriate time to establish the proper foundation for evidence is prior to its admission, any concerns arising from the detective’s testimony are not dispositive where, on cross-examination, the victim was shown the surveillance footage previously entered into evidence and confirmed that it depicted the confrontation he had with defendant and the subsequent shooting. (County Ct, Rensselaer Co)

Third Department *continued***People v Ferrer, 248 AD3d 1507 (3rd Dept 4/16/2026)
CPL § 440.10 | NO IAC WHERE COUNSEL DID NOT OBJECT
TO STUN CUFF RESTRAINT | AFFIRMED**

ILSAPP: Appellant appealed from a Broome County Court order denying, after a hearing, his CPL § 440.10 motion to vacate a judgment convicting him of second-degree burglary. The Third Department affirmed. County Court did not err in denying appellant's motion and finding that defense counsel was not ineffective for failing to object to the use of an electric stun belt restraint on appellant during the trial. Nothing in the record suggested that the stun cuff was visible to jurors or that anyone in the courtroom was aware of the device on appellant's leg except for appellant and law enforcement. Indeed, defense counsel testified at the 440 hearing that he was not aware of the stun cuff and had never seen one in his 35 years practicing law. "[I]t is axiomatic that defense counsel cannot raise an argument premised on a fact he does not know." Moreover, counsel "cannot be faulted for failing to make an objection which has little to no chance of success." Given appellant's criminal and disciplinary history, some form of restraint would have been justified. And if counsel objected to the stun cuff, appellant could have been placed in more visible restraints such as handcuffs or shackles, which would have been inconsistent with counsel's strategy of deemphasizing security measures before the jury. (County Ct, Broome Co)

**Matter of Luisa JJ. v Joseph II., 248 AD3d 1534
(3rd Dept 4/16/2026)
HAGUE CONVENTION | COUNSEL FEES & EXPENSES |
REVERSED & REMITTED**

ILSAPP: Appellant appealed from a Warren County Family Court order granting petitioner mother's application for fees in a Hague Convention wrongful retention case. The Third Department reversed and remitted for further proceedings. The International Child Abduction Remedies Act, implementing the Hague Convention, allows the prevailing party in a wrongful retention case to move for counsel fees and other expenses to be paid by the other party. Here, in response to the mother's motion for fees, the father raised several grounds on which the award would be "clearly inappropriate" under the statute. But Family Court failed to analyze those claims in its order, instead ruling in a "conclusory fashion." Because the record was insufficient for the Third Department to exercise its inherent fact-finding power, it remitted to Family Court to address all appropriate factors. Green Kaminer Min & Rockmore LLP (Michael Banuchis, of counsel) represented Joseph II. (Family Ct, Warren Co)

**Matter of Veronica LL. v Ethan LL, 248 AD3d 1428
(3rd Dept 4/16/2026)
FAMILY OFFENSES/RIGHT TO COUNSEL
LASJRP: In this family offense proceeding, the Third Depart-**

ment affirms an order that granted assigned counsel's motion for leave to withdraw and denied respondent's request for the appointment of new assigned counsel.

Assigned counsel moved to be relieved based upon respondent's accusation that counsel was acting against his interests and participating in a broader judicial conspiracy against him. There was good and sufficient cause for withdrawal.

Respondent forfeited his right to assignment of further counsel. Eight assigned attorneys were relieved from representation upon their motions or at respondent's behest. He repeatedly rejected sound professional advice, made improper demands and engaged in conduct that caused the breakdown of attorney-client relationships. Due to his threats of litigation against the assigned counsel program, that program declined to process any further applications on his behalf, requiring the Family Court to make direct assignments of counsel to respondent. (Family Ct, Saratoga Co)

**People v Nesbitt, 248 AD3d 1564 (3rd Dept 4/23/2026)
INVALID APPEAL WAIVER | SENTENCE NOT EXCESSIVE |
AFFIRMED**

ILSAPP: Appellant appealed from a Schenectady County Court (Caruso, J.) judgment convicting him of first-degree criminal contempt, second-degree attempted assault, and second-degree menacing, following his guilty plea. The Third Department affirmed but found the waiver of appeal invalid. The written waiver indicated that it "mark[s] the end of [his] case" and stated that appellant waived the right to appeal any matters "which [he] may collaterally attack in any state or federal court." Although the written waiver and oral colloquy advised that some direct appellate review survived, neither clarified that appellant's right to seek collateral relief also survived the waiver of appeal. However, the imposition of consecutive sentences was not unduly harsh or severe. As to appellant's complaint that County Court failed to append a letter of support from appellant's fiancée to the presentence report, as promised, the Third Department directed appellant to raise this issue with the sentencing court. Cynthia Feathers represented Nesbitt. (County Ct, Schenectady Co)

Fourth Department

In the online version of the *REPORT*, the name of each case summarized is hyperlinked to the opinion provided on the website of the New York Official Reports, www.nycourts.gov/reporter/Decisions.htm.

**Matter of Alejandro G.-P., 246 AD3d 1464
(4th Dept 2/11/2026)
ABUSE/NEGLECT - Absconding With Children During
Proceeding**

LASJRP: The Fourth Department upholds findings of neglect

Fourth Department *continued*

where the mother, *inter alia*, violated a court order and absconded with the children during the pendency of this proceeding. (Family Ct, Erie Co)

People v Ashton O., 246 AD3d 1492 (4th Dept 2/11/2026)
ADOLESCENT OFFENDER | NO JURISDICTION DUE TO AGE |
REVERSED & REMOVED TO FAMILY COURT

ILSAPP: Appellant appealed from a Wayne County Court order adjudicating him a youthful offender and convicting him, following his guilty plea, of hazing and forcible touching. The Fourth Department reversed and remitted for an order removing the case to Family Court. County Court lacked jurisdiction over appellant, who was 15 years old at the time of the incident leading to the charges. He did not qualify as an adolescent offender or juvenile offender due to his age, and the court therefore erred when it granted the prosecution's motion preventing removal to Family Court. While a felony charge was dismissed based on legally insufficient evidence before the grand jury, the appellate court rejected appellant's argument that the indictment must be dismissed since the lack of jurisdiction rendered the adjudication a nullity. Office of Veronica Reed (Veronica Reed, of counsel) represented Ashton O. (County Ct, Wayne Co)

People v Brinson, 246 AD3d 1435 (4th Dept 2/11/2026)
30.30 | SUMMARY DENIAL IMPROPER |
ABEYANCE & REMITTED

ILSAPP: Appellant appealed from a Monroe County Supreme Court judgment convicting him of second-degree CPW. The Fourth Department held the appeal in abeyance and ordered a hearing into appellant's CPL §30.30 motion. The court denied the motion the day it was filed without any response from the prosecution and failed to address whether the prosecution possessed initial discovery before filing its certificate of compliance and if so, whether the prosecution exercised due diligence before filing it. On remand, the motion court would decide these issues, "and if the court concludes that the initial certificate of compliance was invalid," also determine whether the prosecution was ready within the required time. Monroe County Public Defender (Guy A. Talia, of counsel) represented Brinson. (Supreme Ct, Monroe Co)

Matter of Craig v Thomas, 246 AD3d 1493
(4th Dept 2/11/2026)
GRANDPARENT CUSTODY | EXTRAORDINARY
CIRCUMSTANCES | REVERSED & REMITTED

ILSAPP: Appellant grandmother appealed from a Wayne County Family Court order dismissing her custody petition and granting the father custody of the children. The Fourth Department reversed and remitted for further proceedings.

Family Court erred in determining that the grandmother failed to demonstrate extraordinary circumstances giving her standing to seek custody. The father was incarcerated for a period of approximately 4 years, during which the children lived with the grandmother. He failed to maintain any contact with them during his incarceration and did not visit them even after his release. The cumulative effect of these conditions was sufficient to establish extraordinary circumstances. A subsequent consent order granting custody to the grandmother did not moot out the appeal, because the consent order did not constitute a judicial finding or admission of extraordinary circumstances. Thomas L. Pelych represented appellant grandmother Lalisa Craig. (Family Ct, Wayne Co)

People v Felix, 246 AD3d 1372 (4th Dept 2/11/2026)
WEIGHT OF THE EVIDENCE | EWC | NO EVIDENCE
APPELLANT KNEW CHILD WAS PRESENT | MODIFIED

ILSAPP: Appellant appealed from a Wayne County Court judgment convicting him, upon a jury verdict, of second-degree criminal mischief and endangering the welfare of a child. The Fourth Department modified by reversing and dismissing the EWC count and otherwise affirmed. The charges arose from an incident where appellant drove his pickup truck into the back of another pickup truck, driven by the complainant, with complainant's 6-year-old son in the backseat. While the legal sufficiency argument was unpreserved because the trial order of dismissal did not include the specific argument raised on appeal, nonetheless, the Fourth Department found that the EWC conviction was against the weight of the evidence. There was "no evidence presented at trial from which the jury could reasonably infer that [appellant] was aware that the child was in the complainant's vehicle." Wayne County Public Defender & Banasiak Law Office, PLLC (Piotr Banasiak, of counsel) represented Felix. (County Ct, Wayne Co)

Matter of Harper v Snow, 246 AD3d 1397
(4th Dept 2/11/2026)
APPELLATE PROCEDURE | NO APPEAL LIES FROM
DECISION | DISMISSED

ILSAPP: Appellant appealed from a Wayne County Family Court order modifying a prior visitation order. The Fourth Department dismissed the appeal. The document appealed from was titled "Memorandum-Decision" and directed the petitioner to submit a proposed order consistent with the decision. Since a decision is not an appealable paper, the appeal was dismissed. (Family Ct, Wayne Co)

People v Hunt, 246 AD3d 1391 (4th Dept 2/11/2026)
30.30 | LAFONTAINE | FAILURE TO RULE ON PERIODS OF
DELAY | ABEYANCE & REMITTED

ILSAPP: Appellant appealed from an Oneida County Court judgment convicting him, upon a jury verdict, of seventh-degree

Fourth Department *continued*

CPCS. The Fourth Department held the case, reserved decision, and remitted to County Court for a determination on whether two periods of pre-trial delay were attributable to the prosecution with regard to appellant's statutory speedy trial claim. As an initial matter, citing CPL § 470.15, the court agreed with the defense that the appellate court had no power to review the lower court's determinations that certain periods were chargeable to the prosecution, since those rulings were not adverse to appellant. Remittal was required, where the lower court failed to explicitly rule on two additional periods of delay, which—if chargeable to the prosecution—would mean the prosecution had violated appellant's statutory speedy trial rights. Adam Amirault represented Hunt. (County Ct, Oneida Co)

People v Meyer, 246 AD3d 1507 (4th Dept 2/11/2026)**EXCESSIVE SENTENCE | BURGLARY | SENTENCE REDUCED**

ILSAPP: Appellant appealed from a Cayuga County Court judgment convicting him, upon his guilty plea, of third-degree burglary and petit larceny. The Fourth Department modified, in the interest of justice, by reducing the sentence imposed for third-degree burglary to an indeterminate term of 2 to 4 years. Appellant, who stole to support his addiction, had no history of violence and suffered from substance use disorder and mental health issues. His present conviction stems from an incident where he stole two cans of hard iced tea from a pharmacy that he was prohibited from entering. David P. Elkovitch represented Meyer. (County Ct, Cayuga Co)

People v Singleton, 246 AD3d 1505 (4th Dept 2/11/2026)**SORA | RISK FACTOR 8 | AUTOMATIC OVERRIDE | DUE PROCESS | REVERSED & REMITTED**

ILSAPP: Appellant appealed from an Ontario County Court order designating him a level three offender under SORA. The Fourth Department reversed and remitted to Ontario County Court for further proceedings to determine whether an upward or downward departure was warranted. A juvenile delinquency adjudication may not be considered a crime for purposes of assessing points in a SORA determination. Accordingly, the SORA court improperly assessed 10 points under risk factor 8 for appellant's age at the time of his first sex crime based on a juvenile delinquency adjudication when he was 15 years old. The SORA court further erred when it applied an automatic override based on "a clinical assessment that the offender has a psychological, physical, or organic abnormality that decreases his ability to control impulsive sexual behavior." Neither the prosecution nor the Board requested this automatic override, appellant never had an opportunity to challenge it, and there was no evidence in the record to support the SORA court's conclusion that the override was applicable. Without the improperly assessed points under risk factor 8 and the auto-

matic override, appellant was a presumptive level 2 offender. The Legal Aid Bureau of Buffalo, Inc. (Alina M. Young, of counsel) represented Singleton. (County Ct, Ontario Co)

People v Swanton, 246 AD3d 1441 (4th Dept 2/11/2026)**ILLEGAL SENTENCE | CONSECUTIVE SENTENCES****UNAUTHORIZED | MODIFIED**

ILSAPP: Appellant appealed from a Herkimer County Court judgment convicting him of second-degree murder, first-degree assault and two counts of first-degree criminal use of a firearm and sentencing him to consecutive terms on the murder and assault counts. The Fourth Department modified and ordered the sentences to run concurrently. "The court erred in directing that the sentence for the [assault count] run consecutively to the sentence imposed on the [murder count] because the murder was the predicate felony for the felony assault." Frank Policelli represented Swanton. (County Ct, Herkimer Co)

People v Taylor, 246 AD3d 1478 (4th Dept 2/11/2026)**PEOPLE'S APPEAL | GRAND JURY EVIDENCE LEGALLY SUFFICIENT | REVERSED & CHARGES REINSTATED**

ILSAPP: The prosecution appealed from an Erie County Court order reducing the first and second counts of an indictment based on legal insufficiency of the evidence before the grand jury. The Fourth Department reversed, reinstated the charges, and remitted for further proceedings. County Court erred in reducing the counts in the absence of a written motion, required under CPL § 210.45. Additionally, contrary to County Court's conclusion, there was legally sufficient evidence supporting the two counts of aggravated cruelty to animals, based on evidence that Taylor intentionally killed three kittens in a manner that inflicted extreme pain on them. County Court also improperly found that Taylor was incapable of forming the requisite intent, since consideration of that potential argument "rests exclusively with the petit jury." (County Ct, Erie Co)

Matter of Villani v Wendig, 246 AD3d 1402**(4th Dept 2/11/2026)****CUSTODY - Relocation**

LASJRP: The Fourth Department upholds the denial of the mother's request for permission to relocate with her daughter to Florida, noting, inter alia, that the child has lived in New York her whole life, had connections to the community in which she grew up, and engaged in activities that were not available in Florida; that although the mother presented some evidence that the child would be emotionally enriched by moving to Florida because she had already made a few friends there, that enrichment would come at the expense of her relationship with the father; that allowing the mother to relocate would separate the child from her sibling, who lives with the father in New York; that although the mother argues that she needs a "fresh start," away from New York, to free herself from the father's allegedly

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dysfunctional and harassing behavior, the need for a fresh start, standing alone, is insufficient to warrant relocation, and it is unclear how relocating to Florida would resolve that problem since the mother would still have to communicate with the father about the child and co-parent with him; and that the record supports the conclusion that the mother is not capable of ensuring that the child will continue to have a close relationship to the father if she relocated. (Family Ct, Cattaraugus Co)

People v Welch, 246 AD3d 1411 (4th Dept 2/11/2026)
DVSJA | AD SPLIT: APPEALABILITY OF DISMISSAL |
SUBSTANTIALITY OF ABUSE | AFFIRMED | DISSENT

ILSAPP: Appellant appealed from an Oneida County Court order dismissing, without a hearing, his application for resentencing pursuant to the Domestic Violence Survivors Justice Act (DVSJA: CPL § 440.47) on 2014 convictions for two counts of second-degree murder, for which appellant was sentenced to two consecutive terms of 20 years to life imprisonment. The Fourth Department held that the order was appealable but affirmed the summary denial of resentencing. On the heels of the First Department’s similar holding in *People v Croney* (-- AD3d --, 2026 NY Slip Op 00630 [1st Dept 2026]), the Fourth Department joined the First and Second Departments in ruling that, even if called a “dismissal without prejudice,” an order denying a DVSJA resentencing hearing should be treated as a summary denial and is therefore appealable as of right under CPL § 440.47(3)(a). [On the appealability question, *Welch* places the Third Department in the definitive minority, having reached a contrary conclusion in *People v Melissa OO*. (234 AD3d 101 [3d Dept 2024]) and progeny.] In addition to analyzing the statutory text establishing a right to counsel on “any appeals,” the *Welch* majority relied heavily on the doctrine of liberally construing remedial statutes like the DVSJA. Thwarting appeals that bring up for consideration the adequacy of an applicant’s corroboration “would insulate from judicial review orders that improperly dismiss applications that meet the [DVSJA’s threshold] evidentiary provisions..., leaving [applicants] who are deserving of hearings with no legal recourse except to refile their applications, which could be improperly and repeatedly denied again.” On the merits, however, the court held that summary denial was proper because appellant’s proffered corroboration—the pre-sentence report, a photograph showing scratches on his neck, and 68 pages of text messages from his girlfriend, one of the decedents—insufficiently corroborated his claim that the abuse he experienced was substantial. The court did not analyze the distinction between the burden of proffering corroboration in pleadings versus the burden of proof at a hearing, where testimony from fact and/or expert witnesses

might address the question of substantiality. The dissent (Montour, J.) would have dismissed the appeal, adopting the Third Department’s reasoning in *Melissa OO*. Melissa K. Swartz represented Welch. (County Ct, Oneida Co)

People v Williams, 246 AD3d 1370 (4th Dept 2/11/2026)

APPEAL - Waiver Of Right

LASJRP: The Fourth Department rejects defendant’s contention that his appeal waiver is invalid because it was included as part of a plea agreement offered by the court and the court failed to sufficiently articulate the reasons for its demand.

This Court has not adopted the rule created by the Second Department in *People v Sutton* (184 A.D.3d 236). In any event, in contrast to what happened in *Sutton*, the court here included the appeal waiver as a condition of the plea offer prior to accepting defendant’s plea and articulated on the record that the waiver was required so defendant could secure the benefit of the sentencing limitation promised by the court. (County Ct, Monroe Co)

People v Wright, 246 AD3d 1429 (4th Dept 2/11/2026)

LESSER INCLUDED OFFENSE | UNSUPPORTED BY

REASONABLE VIEW OF EVIDENCE | AFFIRMED | DISSENT

ILSAPP: Appellant appealed from a Monroe County Supreme Court judgment convicting him of first-degree manslaughter. The Fourth Department held, with one justice dissenting, that Supreme Court properly declined to instruct the jury on the lesser included offense of second-degree manslaughter. The charges arose from an incident where appellant allegedly hit the decedent from behind with a baseball bat during an altercation involving multiple individuals. The decedent was “some distance away” from the fighting. The dissenting justice (Ogden, J.) would have found that a reasonable view of the evidence supported submitting the lesser charge because appellant could have acted recklessly rather than intentionally. That the jury acquitted appellant of second-degree murder supported submission of the lesser charge. (Supreme Ct, Monroe Co)

People v Wyatt, 246 AD3d 1448 (4th Dept 2/11/2026)

RIGHT TO COUNSEL - Effective Assistance/

Failure To Make Suppression Motion

LASJRP: The Fourth Department concludes that defendant was deprived of the effective assistance of counsel, and remits for a suppression hearing, where defense counsel could have presented a colorable argument that the police officer’s actions were either not justified at the inception of the encounter or otherwise not reasonably related in scope to the circumstances presented.

A police officer discovered a gun in defendant’s front pocket while in a gas station convenience store after the officer received information from a 911 call from a security guard at a

Fourth Department *continued*

nearby restaurant who said that he observed a man who had what “looks like a black phone, but then again ... looks like a gun.” The security guard provided a description of the individual that matched defendant and said that he could not be sure but thought the man might have been part of a dispute that had taken place at the restaurant earlier in the day. The testimony of the officer at a Huntley hearing and his body cam footage presented a close question under *De Bour* jurisprudence. (County Ct, Monroe Co)

Matter of Zyair M., 246 AD3d 1385 (4th Dept 2/11/2026)**DISPOSITION - Placement/Credit For Detention Time**

LASJRP: Reaching the issue in the interest of justice despite the lack of preservation, the Fourth Department agrees with respondent that the court erred in failing to credit him with the 28 days he spent in detention pending disposition where the court failed to make the required finding that credit would not serve the interests of the juvenile or the community. (Family Ct, Erie Co)

People v Chabot, 247 AD3d 1573 (4th Dept 3/20/2026)**VENUE - Offense Committed During Automobile Trip**

LASJRP: In this child sexual abuse prosecution, the Fourth Department rejects defendant’s venue challenge, relying on the private vehicle exception applicable when an offense is committed in an automobile during a trip, and it is impossible to determine in what county the offense occurred.

Here, the conduct occurred at some point while defendant and the child were being driven from Steuben County to Chemung County and back, and the witnesses could not identify precisely when during the trip the conduct occurred, as it was dark outside. (County Ct, Steuben Co)

People v Dowdell, 247 AD3d 1506 (4th Dept 3/20/2026)**PROSECUTION APPEAL | STATUTORY STATEMENT REQUIRED REGARDING DA’S APPELLATE CHALLENGE TO SUPPRESSION RULING | DISMISSED**

ILSAPP: The prosecution appealed from an Onondaga County Supreme Court order granting suppression of certain physical evidence and statements. The Fourth Department dismissed the appeal. The prosecution has an appeal as of right from a suppression ruling so long as they file a statement in the appellate court under CPL § 450.50 alleging that the ruling rendered the proof either insufficient as a matter of law or so weak that a conviction would be impossible. While this statement is not required when the indictment is dismissed by the trial court “inasmuch as the dismissal of the indictment itself guarantees finality,” here the trial court did not dismiss the indictment. Because the prosecution failed to file the requisite CPL § 450.50 statement, the appeal was dismissed. Cambareri & Brenneck (Melissa K. Swartz, of counsel) rep-

resented Dowdell. (Supreme Ct, Onondaga Co)

Matter of Faes v Coulson, 247 AD3d 1524**(4th Dept 3/20/2026)****CUSTODY | SPECIFIC PARENTING TIME SCHEDULE REQUIRED | MODIFIED & REMITTED**

ILSAPP: Appellant mother appealed from an Onondaga County Family Court order awarding the father sole legal custody of the child and awarding her supervised parenting time “as the parties mutually agree.” The Fourth Department modified and remitted for Family Court to set a parenting time schedule. The record demonstrated that leaving parenting time up to the parties to arrange would be “untenable under the circumstances.” Law Office of Veronica Reed (Veronica Reed, of counsel) represented Coulson. (Family Ct, Onondaga Co)

Matter of Galitsky v Galitsky, 247 AD3d 1535**(4th Dept 3/20/2026)****FAMILY OFFENSE | EVIDENCE LEGALLY INSUFFICIENT | REVERSED**

ILSAPP: Appellant appealed from a Monroe County Family Court order finding that she committed acts constituting second-degree harassment and issuing an order of protection (OOP) against her. The Fourth Department reversed. The Appellate Division reached the merits of the appeal although the OOP had expired, because the “enduring consequences” of the order rendered the appeal not moot. Here, the petitioner failed to present legally sufficient evidence of second-degree harassment, warranting reversal. The Monroe County Public Defender (Sabrina Bremer, of counsel) represented appellant. (Family Ct, Monroe Co)

Matter of Irwin v Snyder, 247 AD3d 1479**(4th Dept 3/20/2026)****CUSTODY & VISITATION MODIFICATION | DISMISSAL WITH PREJUDICE UNWARRANTED | REVERSED & PETITION REINSTATED**

ILSAPP: Appellant appealed from an Ontario County Family Court order dismissing with prejudice his petition seeking additional visitation for failure to state a cause of action. The Fourth Department reversed, reinstated the petition, and remitted to Family Court. A prior order permitted the father to file a petition to modify visitation after completing a visitation schedule of Tuesday afternoons, without a further showing of changed circumstances. Because that was all the prior order required, Family Court erred in finding that the subsequent petition failed to state a cause of action, although the father may not have complied with the prior order’s remaining terms. Michael J. Pulver represented Irwin. (Family Ct, Ontario Co)

People v Martin, 247 AD3d 1468 (4th Dept 3/20/2026)**PROSECUTION APPEAL | LEGAL INSUFFICIENCY | AFFIRMED**

ILSAPP: The prosecution appealed from an Onondaga County

Fourth Department *continued*

Court order granting the defense's motion to dismiss the indictment. The Fourth Department affirmed. County Court properly held that the evidence before the grand jury was not legally sufficient to establish second-degree murder and second-degree CPW. It was undisputed that appellant was not the shooter in the incident, and he was charged under an accomplice liability theory. The grand jury evidence showed that a blue Subaru Crosstrek was present at the scene and that an officer observed "something" sticking out of the passenger side, but it was never established what the "something" was. Nor was there any other evidence that Martin was present, or, even if he had been present, that he shared the shooter's intent to kill the decedent. Keem Appeals, PLLC (Bradley E. Keem, of counsel) represented Martin. (County Ct, Onondaga Co)

People v McEnnis, 247 AD3d 1473 (4th Dept 3/20/2026)
CIRCUMSTANTIAL EVIDENCE - Surveillance Video

LASJRP: The Fourth Department agrees with defendant that the trial court erred in denying his request for a circumstantial evidence instruction, which a trial court must grant when the proof of guilt rests solely on circumstantial evidence.

Although surveillance video footage of a crime can constitute direct evidence, it did not constitute direct evidence here. Defendant's identity cannot be discerned clearly from the surveillance video footage since the perpetrators in the videos are masked. However, the error was harmless. (Supreme Ct, Niagara Co)

People v Robinson, 247 AD3d 1560 (4th Dept 3/20/2026)
SEARCH AND SEIZURE - Request For Information

LASJRP: At approximately 9:45 p.m., two officers were patrolling around an apartment complex that was in what one officer described as a "high crime area ... between two gang territories." There was a "trespass affidavit" on file that requested that any person "found on or in the property ... who is not a tenant, guest of a tenant, or on the property with legitimate business, be arrested and prosecuted for trespass." The officers approached defendant approximately 30 seconds after they entered the parking lot and observed him sitting alone in an idling car. While defendant provided one officer identification establishing that he was a resident of the apartment complex, the other officer observed a bag with a beige substance that the officer believed to be cocaine in the pocket of the driver's door. The officers directed defendant to exit the vehicle, and during a search of defendant's person the officers found a loaded handgun in his pocket and a bag of cocaine in his underwear.

The Fourth Department, in a 3-2 decision, orders suppression, finding no justification for an approach to request information. The high-crime-area factor was insufficient, and a

determination that the trespass affidavit permitted a request for information would improperly negate the necessity that law enforcement officers have an objective, credible reason not necessarily indicative of criminality. (Family Ct, Onondaga Co)

People v Dennis, 247 AD3d 1587 (4th Dept 3/27/2026)
BRADY MATERIAL

MOTION TO VACATE JUDGMENT OF CONVICTION

LASJRP: The Fourth Department concludes that although evidence that a prosecution witness had two arrests pending at the time of his trial testimony and that the witness had a personal relationship with an officer involved in the case was Brady material, and even assuming, arguendo, that the information was available to the People, defendant failed to establish materiality under Brady and thus he is not entitled to have his conviction vacated. (County Ct, Niagara Co)

Matter of Hanalise S. (Ezra B.B.), 247 AD3d 1580
(4th Dept 3/27/2026)

ARTICLE 10 | IAC | AFC FAILURE TO FILE BRIEF |
ABEYANCE & NEW AFC ASSIGNED

ILSAPP: Appellant appealed from two Monroe County Family Court orders issuing orders of protection in favor of his children. The Fourth Department held the appeal and assigned a new AFC to represent the youngest children. That attorney failed to file an appellate brief, depriving his clients of the effective assistance of counsel to which they are entitled in Article 10 proceedings. The court therefore relieved that attorney of the assignment and directed new counsel be assigned, holding the appeals in abeyance in the meantime. (Family Ct, Monroe Co)

People v Heffernan, 247 AD3d 1644 (4th Dept 3/27/2026)
DISCOVERY - Court-Ordered Access To Crime Scene

LASJRP: In this prosecution in which defendant was charged with pushing and kicking the victim down a staircase in her home, dragging her to defendant's basement apartment, threatening her with a knife, and choking her, tying her up, and beating her with a chair, the Fourth Department finds no error where the court denied defendant's motion pursuant to CPL § 245.30(2) seeking access to the premises to inspect and photograph the stairs. The condition of the stairs was sufficiently preserved by alternative means, including crime scene photographs and body camera footage recorded by officers when they arrived at the crime scene. (County Ct, Onondaga Co)

Matter of Jonah M., 247 AD3d 1646 (4th Dept 3/27/2026)
TPR | DILIGENT EFFORTS FOUND | AFFIRMED | DISSENT

ILSAPP: Appellant appealed from an Onondaga County Family Court order terminating his parental rights based on permanent neglect. The Fourth Department affirmed, with two justices dissenting. The majority affirmed Family Court's determination

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that the agency made the required diligent efforts to encourage and strengthen the parental relationship by contacting the correctional facility where the father was incarcerated, setting up a telephone visit between the father and child, sending him letters, and creating a service plan for him. The dissent would have reversed, finding the agency's efforts to be "minimal, perfunctory, and generic." The service plan and communications from the agency were not tailored to the father's individual circumstances: for example, they never suggested programs he could participate in while incarcerated. And although the father requested in-person visitation with the child while incarcerated, with his DOCCS counselor making repeated requests to the caseworker, the caseworker failed to obtain the required court order. The dissent thus concluded that the agency's actions were "aimed more toward ensuring that the father's parental rights were terminated—as evidenced by petitioner's six letters essentially admitting as much—than ensuring that the father could meaningfully reunite with the child." (Family Ct, Onondaga Co)

People v Jones, 247 AD3d 1583 (4th Dept 3/27/2026)
JURY SELECTION PROCEDURE | SUBPEONA REQUEST
IMPROPERLY DENIED | IMPEACHMENT OF FINGERPRINT
EXAMINER | REVERSED

ILSAPP: Appellant appealed from an Onondaga County Court judgment convicting him of third-and fourth-degree CPCS, after a jury trial. The Fourth Department reversed and granted a new trial on those counts. The trial court violated CPL § 270.25 when it permitted appellant and his codefendant "to each unilaterally exercise their shared peremptory challenges," which resulted in the defense "exhausting their shared peremptory challenges before all jurors were selected." This error mandated automatic reversal. The court further erred in denying appellant's request for a third-party subpoena for records regarding the latent print examiner. These materials "related to the examiner's previous errors and bore on the reliability of her identification of appellant's fingerprints in this case." Moreover, this error was not harmless because the proof of guilt was not overwhelming. Frank H. Hiscock Legal Aid Society (Casey S. Duffy, of counsel) represented Jones. (County Ct, Onondaga Co)

People v Jones, 247 AD3d 1604 (4th Dept 3/27/2026)
LEGAL SUFFICIENCY | PROOF OF AGE | MODIFIED &
COUNTS DISMISSED

ILSAPP: Appellant appealed from an Oneida County Court judgment convicting him, upon a jury verdict, of predatory sexual assault against a child, first-degree rape, first-degree criminal sexual act (two counts) and third-degree assault. The Fourth Department modified by reversing the predatory sexual

assault and one count of criminal sexual act convictions, and, as modified, affirmed. The evidence was legally insufficient to establish that appellant was 18 years old or more at the time of the incident, an element of both of the invalidated charges. Although the issue was unpreserved, the Fourth Department reviewed it in the interest of justice. Appellant was in fact 33 years old at the time of the incident and the jury presumably had the opportunity to observe him at trial, but that opportunity, standing alone, did not satisfy the prosecution's burden of establishing appellant's age. Cambareri & Brennick (Melissa K. Swartz, of counsel) represented Jones. (County Ct, Oneida Co)

People v Williams, 247 AD3d 1597 (4th Dept 3/27/2026)
HEARSAY - Declaration Against Penal Interest

LASJRP: The Fourth Department, in a 3-2 decision, agrees with defendant that the court erred in refusing to admit, as a statement against penal interest, testimony from the CPL Article 440 hearing of a witness who was unavailable to testify at the second trial because he invoked his Fifth Amendment privilege against self-incrimination.

Noting the more lenient standard applied to exculpatory statements, the Court concludes that there is a reasonable possibility that the testimony might be true. The witness's description of a third party shooting at the window from the backyard when a light went on is consistent with the victim's testimony that she was shot immediately after she turned on the light and physical evidence that the shots were fired through the rear window. The witness's testimony that the third party picked up a .38 firearm is consistent with recovered projectiles. The witness's description of running down the driveway with the third party immediately following the shots, and then across the street and over a backyard fence coincides with a female neighbor's description in her trial testimony of two men jumping over her back fence. The testimony of a law enforcement witness corroborated the witness's account of the robberies he committed with the shooter. None of the inconsistencies rendered the witness's testimony any less reliable than that of the prosecution witnesses. (County Ct, Onondaga Co)

People v Bredt, 248 AD3d 1791 (4th Dept 4/24/2026)
PROSECUTORIAL MISCONDUCT | IMPROPER COMMENT |
REVERSAL NOT REQUIRED | AFFIRMED

ILSAPP: Appellant appealed from an Erie County Supreme Court judgment convicting him, upon a jury verdict, of two counts of second-degree murder. The Second Department affirmed but acknowledged that the prosecutor's sarcastic comment—agreeing to stipulate to "whatever other speculative statements that may have been made about this or Santa Claus or the Easter bunny"—was improper. Nonetheless, reversal was not required since the trial court effectively sustained defense counsel's prompt objection to the improper comment and defense counsel did not request a curative instruction or move for a mistrial. "[T]hat one isolated comment was not so egregious that it deprived [appellant] of a fair trial." (Supreme Ct, Erie Co)

Fourth Department *continued***People v Clarke, 248 AD3d 1719 (4th Dept 4/24/2026)****EXCESSIVE SENTENCE | SEX OFFENSES | CONSECUTIVE TO CONCURRENT | MODIFIED**

ILSAPP: Appellant appealed from a Monroe County Court judgment convicting him, upon a jury verdict, of first-degree sexual abuse (five counts), predatory sexual assault against a child (three counts), and other offenses. The Fourth Department modified, in the interest of justice, by running the sentences imposed on two of the counts concurrently with each other and otherwise affirmed. Under the circumstances of the case, the imposed aggregate prison sentence of 52 years to life was “unduly harsh and severe,” as it “effectively guarantee[d] a life sentence without the possibility of parole.” Although the offenses were “heinous and despicable,” an aggregate prison sentence of “37 years to life is an appropriate sanction for the crimes committed.” The Monroe County Conflict Defender (Kathleen P. Reardon, of counsel) represented Clarke. (County Ct, Monroe Co)

Matter of Crespo v Wynn, 248 AD3d 1695**(4th Dept 4/24/2026)****CUSTODY | WAIVER OF RIGHT TO COUNSEL | NO SEARCHING INQUIRY | REVERSED & REMITTED**

ILSAPP: Mother appealed from a Monroe County Family Court order granting the parties joint custody of the subject children. The Fourth Department reversed and remitted for further proceedings. Although the custody order was entered on the mother’s default, rendering its substance unavailable for appellate review, it brought up for review the mother’s waiver of the right to counsel. Because litigants in an Article 6 custody case face the potential loss of fundamental rights regarding their children, Family Court must conduct a “searching inquiry” to ensure any waiver of the right to counsel is knowing, voluntary, and intelligent. Here, the court failed to do so, requiring reversal and a new hearing. The Monroe County Public Defender (Jonathan Garvin, of counsel) represented Wynn. (Family Ct, Monroe Co)

People v Giambelluca, 248 AD3d 1776 (4th Dept 4/24/2026)**IMPEACHMENT | IMPROPER USE OF EXTRINSIC EVIDENCE | HARMLESS ERROR | AFFIRMED**

ILSAPP: Appellant appealed from an Erie County Court judgment convicting him, upon a jury verdict, of second-degree murder and first-degree robbery. The Fourth Department affirmed but found that the prosecution was improperly permitted to use extrinsic evidence to impeach the defense expert, where the impeachment was on a collateral issue relevant only to the expert’s credibility. Specifically, “the court erred in allowing the prosecutor to read from a court decision rejecting the expert’s testimony in an unrelated criminal

prosecution of a different defendant.” Nevertheless, the error was harmless because there was overwhelming evidence of guilt and there was “no significant probability that the error contributed to [Giambelluca]’s conviction.” (County Ct, Erie Co)

Matter of Hoover v Ester, 248 AD3d 1755**(4th Dept 4/24/2026)****CUSTODY MODIFICATION | UNAVAILABILITY OF SUPERVISED VISITATION IS CHANGE OF CIRCUMSTANCES | REVERSED & REMITTED**

ILSAPP: Mother appealed from an Ontario County Family Court order dismissing her petition to modify a prior visitation order. The Fourth Department reversed and remitted. The underlying order provided the mother with once-monthly, agency-supervised visitation, as well as any other supervised visits the parties could agree on. Almost immediately after the parties agreed to that order, the agency indicated that there was “an indefinite wait list for supervised visitation, which made such visitation improbable,” and the father was not willing to agree to any additional contact. This situation, set forth in the mother’s modification petition, constituted a change of circumstances based on which Family Court should have considered whether modifying the order was in the children’s best interests. Because the record was insufficient for the Fourth Department to make that determination, it remitted to Family Court for a new hearing. Andrew J. DiPasquale represented Hoover. (Family Ct, Ontario Co)

People v Jaquan C., 248 AD3d 1799 (4th Dept 4/24/2026)**DVSJA | IAC FOR FAILURE TO REQUEST PL § 60.12****HEARING | RECORD INSUFFICIENT | AFFIRMED | DISSENT**

ILSAPP: Appellant appealed from an Erie County Supreme Court judgment convicting him, upon a guilty plea, of first-degree manslaughter and sentencing him to 15 years’ imprisonment. The Fourth Department affirmed, with two justices dissenting. The majority held that the record was insufficient to establish that trial counsel was ineffective for failing to request a DVSJA hearing under PL § 60.12, as it was “silent with respect to, among other things, whether defense counsel discussed the possibility of an alternative DVSJA sentence with defendant or raised the issue during plea negotiations with the prosecution.” Any IAC claim therefore must be brought by a CPL § 440 motion. The dissent (Ogden, J., joined by Nowak, J.) would have vacated the sentence and remitting for a DVSJA hearing, finding trial counsel was ineffective for failing to request a PL § 60.12 hearing. The pre-sentence report (PSR) established that appellant and complainant were in an intimate relationship with a history of domestic violence, and that several police reports reflected incidents where complainant was the aggressor. Nor was there a question as to guilt, as appellant killed complainant during an argument by stabbing him once in the chest, he stayed at the

Fourth Department *continued*

scene, and he called 911 as well as complainant's family. Appellant also indicated in the PSR that he thought the 15-year plea deal was "harsh," suggesting he would have wanted to pursue a reduced sentence under the DVSJA. In the dissent's view, there was "no legitimate trial strategy" justifying counsel's omission, which was likely due to "an erroneous belief that [the DVSJA] did not apply because [appellant] and [complainant] were both men." (Supreme Ct, Erie Co)

**People v Jones, 248 AD3d 1709 (4th Dept 4/24/2026)
ILLEGAL SENTENCE | CONSECUTIVE TO CONCURRENT |
MODIFIED**

ILSAPP: Appellant appealed from a Monroe County Supreme Court judgment convicting him, upon a jury verdict, of second-degree murder (two counts), first-degree kidnapping, first-degree robbery, second-degree robbery (two counts), and fourth-degree CPSP. The Fourth Department modified by running the sentences imposed on the second-degree robbery counts concurrently with the sentences imposed on the second-degree murder counts and otherwise affirmed. The trial court imposed illegal sentences by running the two second-degree robbery counts consecutively with other counts where the indictment failed to indicate which of the two second-degree robbery counts "served as the predicate for the felony murder count," and because "it [was] impossible to determine whether the act that formed the basis for the jury's guilty verdict on [one] count...was also...the...act[] that formed the basis for its guilty verdict on [another] count." Although this issue was not "raised by either party," the Fourth Department could not "allow an illegal sentence to stand." However, the "aggregate sentence of 40 years to life imprisonment [was] unaffected" and was not found to be "unduly harsh or severe." (Supreme Ct, Monroe Co)

**People v Joyner-Pounds, 248 AD3d 1683
(4th Dept 4/24/2026)****30.30 | PREJUDICE TO DEFENSE | DA OPPORTUNITY TO
RESPOND | HELD IN ABEYANCE & REMITTED**

ILSAPP: Appellant appealed from a Monroe County Supreme Court judgment convicting her, following a jury trial, of aggravated DWI and DWI. The Fourth Department held the case, reserved decision, and remitted to Supreme Court for further proceedings. Supreme Court erred when it denied appellant's speedy trial motion on the grounds that she would not be prejudiced by the belated discovery and when it advised the prosecution not to respond to appellant's motion. On remittal, the Supreme Court is to afford the prosecution an opportunity to file a response to the motion and then to determine the motion. Monroe County Conflict Defender (Stephanie M. Stare, of counsel) represented Joyner-Pounds. (Supreme Ct, Monroe Co)

**People v Moore, 248 AD3d 1675 (4th Dept 4/24/2026)
SUPPRESSION | SEARCH INCIDENT TO ARREST | IMPROPER
WHERE ARREST NOT PROVEN | REVERSED**

ILSAPP: Appellant appealed from a Monroe County Supreme Court judgment convicting him of second-degree CPW. The Fourth Department reversed, granted suppression, and dismissed the CPW count. After receiving reports of sexual abuse, a Rochester police officer attended appellant's scheduled probation meeting to question him about the allegations. A second officer assisted with transferring appellant to a different location for questioning, and in the process recovered a key fob. Probation officers, aware that appellant did not have a valid driver's license, began activating the fob, found appellant's car in a nearby parking garage, searched it, and recovered a firearm. At the suppression hearing, the first officer testified that he did not inform appellant he was under arrest. The second officer's body camera footage, introduced at the hearing, depicted that he affirmatively told appellant he was not under arrest and was being brought in only for additional questioning. As there was no proof of an actual arrest justifying the search incident to arrest, the recovery of the weapon resulted from an unlawful search and the firearm had to be suppressed. Monroe County Public Defender (Guy A. Talia, of counsel) represented Moore. (Supreme Ct, Monroe Co)

**People v Nixon, 248 AD3d 1669 (4th Dept 4/24/2026)
INVALID APPEAL WAIVER | COURT-INITIATED WAIVER
STRUCK | AFFIRMED**

ILSAPP: Appellant appealed from a Monroe County Court judgment (Dollinger, J.) convicting him, after a guilty plea, of second-degree CPW (2 counts) and menacing a police or peace officer. The Fourth Department affirmed but found the appeal waiver invalid. The plea court extended a plea offer to appellant without stating it would require him to waive his right to appeal. Two weeks later at the plea proceeding, the court once again explained the offer's terms without conditioning them on appellant waiving his right to appeal. But during the plea colloquy, the court, without explanation, stated that a waiver was part of the agreement. The court's waiver colloquy "closely followed the model language." While waivers of appeal are generally not precluded by public policy, a "public policy concern arises" where the plea court proposes a plea bargain on unreduced charges and then insists on an appeal waiver. As such an offer does not require prosecutorial consent, the District Attorney cannot demand an appeal waiver. Where the court demands such a waiver it "gives rise to an appearance that the court is seeking to shield its decisions from appellate review." Such a waiver is invalid unless "it is apparent from the record that the court had a distinct and proper reason" to demand it. The Fourth Department did not adopt the rule announced by the Second Department in *People v Sutton* (184

Fourth Department *continued*

AD3d 236, 244-245 [2d Dept 2020], *lv denied* 35 NY3d 1070 [2020]) (holding that courts must articulate a reason for requiring court-initiated appeal waivers), instead deciding that it would look to the entire record in determining whether there was a “distinct and proper reason for the court’s demand.” The Fourth Department reviewed and rejected the merits of appellant’s claims that the plea court had conducted an inadequate inquiry into whether he had violated his probation terms, had improperly denied youthful offender treatment, and had imposed an excessive sentence. Monroe County Conflict Defender (Kathleen P. Reardon, of counsel) represented Nixon. (County Ct, Monroe Co)

People v Owens, 248 AD3d 1690 (4th Dept 4/24/2026)**People v Owens, 248 AD3d 1692 (4th Dept 4/24/2026)****INVALID OOP | ERROR TO SENTENCE APPELLANT IN ABSENTIA | REMITTED & OOP VACATED**

ILSAPP: Appellant appealed from a Monroe County Supreme Court judgment convicting him, following his guilty plea, of second-degree CPW and from an order resentencing him on that conviction. The Fourth Department vacated the order of protection (OOP) in the interest of justice, reversed appellant’s sentence, and remitted for resentencing. Although unpreserved, the Fourth Department vacated the invalid OOP because it was issued “in favor of an individual who was neither a victim of nor a witness to the crime” that appellant pled guilty to. Further, as the prosecution conceded, Supreme Court erred in resentencing appellant in absentia because appellant “has a right to be personally present at the time sentence is pronounced, including at resentencing.” Kaman Berlove LLP (Bryanne L. Jones, of counsel) represented Owens. (Supreme Ct, Monroe Co)

People v Sanchez, 248 AD3d 1741 (4th Dept 4/24/2026)**EXCESSIVE SENTENCE | MURDER AFTER TRIAL | ACTING IN CONCERT | PROPORTIONALITY | MODIFIED**

ILSAPP: Appellant appealed from an Onondaga County Court judgment convicting him, following a jury trial, of second-degree murder, second-degree attempted murder, and second-degree CPW and sentencing him to an aggregate term of 50 years-to-life. The Fourth Department modified in the interest of justice by reducing the sentence imposed for attempted murder to 15 years and, as modified, affirmed. Appellant was 19 years old at the time of the offense and his sentence was decades longer than the sentences imposed on his codefendants, even though they were all charged with acting in concert with each other to commit the same offenses. Although appellant may have fired the fatal shot, “that was due only to happenstance” and does not render any one of the multiple shooters “more or less culpable than the other[s].” Law Office of Veronica Reed

(Veronica Reed, of counsel) represented Sanchez. (County Ct, Onondaga Co)

People v Serrano, 248 AD3d 1721 (4th Dept 4/24/2026)**GIGLIO VIOLATION | CPL § 330.30 DENIED WHEN EVIDENCE HAD MINIMAL VALUE | AFFIRMED**

ILSAPP: Appellant appealed from a Monroe County Supreme Court judgment convicting him, following a jury trial, of second-degree murder and second-degree CPW. The Fourth Department affirmed. The prosecution failed to meet their obligation of disclosing impeachment material related to an evidence technician, but the trial court did not abuse its discretion in denying appellant’s CPL § 330.30 motion to set aside the verdict based on that alleged *Giglio* violation. “[I]n the context of this case, the value of the undisclosed information as admissible impeachment evidence would have been, at best, minimal.” (Supreme Ct, Monroe Co)

People v Turner, 248 AD3d 1772 (4th Dept 4/24/2026)**SUPPRESSION | NO CONSENT TO SEARCH | COURT-INITIATED WOA INVALID | REVERSED**

ILSAPP: Appellant appealed from an Erie County Supreme Court judgment (Calvo-Torres, A.J.) convicting him of second-degree CPW and fourth-degree CPCS, following his guilty plea. The Fourth Department reversed, vacated the plea, granted suppression, and dismissed the indictment. Initially, under the “totality of the circumstances” appellant’s court-initiated appeal waiver was invalid because there was no “distinct and proper reason” for the trial court “to demand the waiver and foreclose judicial review at the time the demand was made.” The court noted that “the court retains both the obligation and the discretion to impose sentence in light of the information subsequently obtained from the presentence report and other sources regardless of whether defendant waived his right to appeal.” The court also favorably cited *People v Sutton* (184 AD3d 236 [2d Dept 2020], *lv denied* 35 NY3d 1070 [2020]) for the proposition that the court, a non-party, “does not have the same interest [as the prosecution] in achieving finality in the case.” The Fourth Department further held that suppression was warranted because the prosecution did not establish that appellant gave police consent to search his person. Although a Buffalo Police Department officer testified that appellant consented, the body-worn camera footage recorded appellant responding “[f]or what?” to the officer’s request to pat him down. Accordingly, the trial court’s determination that appellant consented to the search was “unsupported by the record.” The Legal Aid Bureau of Buffalo, Inc. (Nicholas P. Difonzo, of counsel) represented Turner. (Supreme Ct, Erie Co)

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