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# CasePrepPlus

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**Summarizing recent significant New York appellate cases**

The Court of Appeals finishes up its opinions from the January argument session with cases addressing whether the court system's COVID-19 safety precautions for jury trials during the pandemic violated a criminal defendant's constitutional rights. The Court also addressed whether the New York Uniform Commercial Code requires application of foreign law to determine the validity of a security issued by a foreign company, even when the security itself contains a New York choice-of-law clause. Let's take a look at those opinions and what else has been happening in New York's appellate courts over the past week.

## COURT OF APPEALS

### CRIMINAL LAW

***People v Ramirez*, 2024 NY Slip Op 00848 (Ct App Feb. 20, 2024)**

**Issue**: **Did the safety protocols implemented during the COVID-19 pandemic—namely social distancing and the requirement that prospective jurors cover their mouths and noses with a face mask when not being questioned individually—violate a criminal defendant's constitutional rights to be present during jury selection and to observe the body language, facial expressions, and demeanor of prospective jurors because defendant could not see each prospective juror's entire face throughout the jury selection process?**

**Facts**: Defendant was involved in a three-car accident on the Long Island Expressway in which one person died and four others were seriously injured. The police discovered that Defendant was drunk at the time of the accident, and he was indicted for aggravated vehicular homicide, manslaughter in the second degree, and other crimes. His trial began in April 2021, when the court system still employed a number of safety measures to protect against the spread of COVID-19. In particular, "prospective jurors were advised that they would be 'assigned specific seats, arranged in a socially distant manner' and that they were required to wear a face mask at all times while inside the courthouse, but would be permitted to lower their masks and use a clear plastic face shield while being directly questioned." Defendant objected to the "safety measures, arguing that ***People v Antommarchi* (80 NY2d 247 [1992])** entitled defendant to observe 'every smile, every frown of a potential juror' and that the procedures prevented him from doing so." The trial court overruled the objection, and jury selection proceeded with the safety measures in place. After trial, Defendant was convicted, and the Appellate Division affirmed.

**Holding**: Noting that "[t]he gravamen of a defendant's right to be present at jury selection is to hear questions intended to search out a prospective juror's bias, hostility or predisposition to believe or discredit the testimony of potential witnesses and the venire person's answers so that they have the opportunity to assess the juror's facial expressions, demeanor and other subliminal responses," the Court of Appeals held that "the safety protocols in use at defendant's jury selection were permissible as they did not impede defendant's ability to be present and observe the selection process. A defendant's right to be present at jury selection does not entail the absolute or unlimited ability to observe each prospective juror's facial expressions. After all, there is much more to body language than a person's nose or mouth; defendant could still observe a great deal about prospective jurors including their posturing, the position of their arms, and their eyes and eyebrows." The Court also held that Defendant's due process rights were not violated because "Defendant was fully able to observe prospective jurors while they were being questioned, and even able to observe prospective jurors who were not being questioned, albeit with masks that covered their mouths and noses. This is at most a slight restriction, and permissible when weighed against the safety of all persons present in the court."

### CONTRACTS, SECURITIES, UNIFORM COMMERCIAL CODE

***Petróleos de Venezuela S.A. v MUFG Union Bank, N.A.*, 2024 NY Slip Op 00851 (Ct App Feb. 20, 2024)**

**Issue**: **Given the presence of New York choice-of-law clauses in an indenture and related notes, does UCC 8-110 (a) (1), which provides that the validity of securities is determined by the local law of the issuer's jurisdiction, require the application of Venezuela's law to determine whether the notes are invalid due to a defect in the process by which the securities were issued?**

**Facts**: Petróleos de Venezuela, S.A. (PDVSA) is an oil and gas company wholly owned by the Venezuelan government. As relevant here, Article 150 of the Venezuelan Constitution mandates that '[t]he execution of national public interest contracts shall require the approval of the National Assembly in those cases in which such requirement is determined by law." PDVSA issued a series of unsecured notes worth approximately $9.15 billion that were due in 2017. As the notes were about to reach their maturity dates, and with declining oil revenues making it clear that PDVSA would default, Venezuelan President Maduro declared a national state of emergency, "granting

himself the authority to execute public interest contracts unilaterally." The National Assembly warned that the Venezuelan Constitution still required approval of national public interest contracts. PDVSA ignored the warning, and offered a bond exchange that extended the maturity date of the notes to 2020 that was approved by the President by not by the National Assembly, and the indentures provided a New York choice-of-law clause. Approximately 40% of the note holders accepted the bond exchange offer, after which the National Assembly declared it invalid. After President Maduro was re-elected in 2018, the National Assembly declared his presidency illegitimate, and appointed a new competing, ad hoc board of PDVSA. PDVSA ultimately defaulted in 2019, and the ad hoc board filed suit in New York federal court, asserting that the bond exchange was invalid because it had not been approved by the National Assembly as required by the Venezuelan Constitution. The District Court concluded that New York law applied, and the Second Circuit certified the question to the Court of Appeals.

**Holding**: The Court of Appeals held that although New York choice-of-law clauses will typically be enforced and New York law will be applied, an exception to that general rule exists under the Uniform Commercial Code for the validity of securities. In particular, "UCC 8-110 (a) (1) contains the UCC's choice-of-law rules for the validity of securities, providing that '[t]he local law of the issuer's jurisdiction, as specified in subsection (d), governs . . . the validity of a security.' Subsection (d), for its part, specifies that the '[i]ssuer's jurisdiction' is 'the jurisdiction under which the issuer of the security is organized or, if permitted by the law of that jurisdiction, the law of another jurisdiction specified by the issuer' (UCC 8-110 [d]). Notably, while subsection (d) allows an in-state issuer to 'specify the law of another jurisdiction as the law governing' certain matters, it does not allow an in-state issuer to choose another jurisdiction's law to govern the validity of the security." This rule is mandatory, the Court held. "Because UCC 8-110 is applicable here, any issue of the validity of a security issued pursuant to the Governing Documents is determined by the law of the issuer's jurisdiction. In this case, the issuer is a Venezuelan entity, so the law of Venezuela is determinative of the issue of validity. However, we emphasize that generally, in every other respect, the Governing Documents are governed by New York law."

## CRIMINAL LAW, SEX OFFENDER REGISTRATION ACT

### *People v Boone*, 2024 NY Slip Op 00928 (Ct App Feb. 22, 2024)

**Issue**: **For purposes of the Sex Offender Registration Act, is the deadline to assign a sex offender a risk level "[30] days prior to discharge, parole or release" properly measured from the date an offender is released from confinement by the Department of Corrections and Community Supervision, despite pending or contemplated proceedings to civilly commit the offender under the Sex Offender Management and Treatment Act?**

**Facts**: Following convictions for sex offenses, defendants requested that their SORA risk assessment hearings be adjourned or delayed because they were the subject of civil commitment proceedings under the Sex Offender Management and Treatment Act, which would keep them in the State's custody, if granted, even after the conclusion of their prison terms. Supreme Court rejected both requests, holding that that SOMTA did not bar a SORA risk level classification hearing, and the Appellate Division affirmed.

**Holding**: The Court of Appeals too held that "sex offenders are 'released' for purposes of SORA at the time they are no longer confined by DOCCS following the completion of their prison sentence, regardless of the possibility that they may be confined under SOMTA," and thus their SORA hearings must be held within the 30 days prior to their release from DOCCS' custody. The plain language of the statute refers to sex offenders' "departure from any of several expressly listed locations, including—first and foremost—a correctional facility." Indeed, the Court explained, "nowhere in the statute does SORA require delaying a risk level classification hearing or a final SORA adjudication until an offender's reentry into the community is assured, and we decline to read those words into the statute. Although the 'release' of a sex offender from confinement by DOCCS most often coincides with reentry into the community, there is nothing in the statute expressly limiting the term to that event." Thus, the potential that a sex offender may be subject to civil commitment under SOMTA following their release from DOCCS' custody does not justify delaying their SORA risk level assessment hearing.

## CRIMINAL LAW, SEX OFFENDER REGISTRATION ACT

### *People v Watts*, 2024 NY Slip Op 00926 (Ct App Feb. 22, 2024)

**Issue**: **Does due process preclude a court from determining a sex offender's risk level under the Sex Offender Registration Act when there is a possibility that the offender—although represented by counsel and provided the other protections attendant to a SORA hearing—may lack capacity to fully comprehend risk-level assessment proceedings?**

**Facts**: After Defendant was arrested for sexual abuse and assault, Supreme Court determined that he was not competent to stand trial and was placed in the custody of the Office of Mental Health for five years until he was eventually determined competent. Defendant then pleaded guilty, and was sentenced to prison. As his prison term came to a close, a SORA hearing was scheduled and eventually adjourned multiple times, as Defendant's attorney asserted he was not competent to understand the SORA risk level assessment proceedings. Defendant's attorney specifically requested a competency hearing before the SORA hearing could proceed, which Supreme Court denied. Defendant was then classified as a risk level two sex offender, while the attorney continued to maintain that Defendant was not competent.

**Holding**: The Court of Appeals reiterated that SORA proceedings are civil in nature, and not criminal, and thus the safeguards required to satisfy due process "are not as extensive as those required in a plenary criminal or civil trial." The Court held, under *Mathews v Eldridge*, 424

US 319, 334-335 (1976), "whether a particular safeguard must be provided requires consideration of three factors: (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of the additional or substitute procedural safeguard; and (3) the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." Evaluating whether Defendant's requested competency hearing was necessarily required to satisfy due process, the Court held that it was not. In particular, "although the liberty interest at stake here is not to be discounted, it is more limited than the interest threatened by a criminal proceeding, where an innocent person may be inaccurately branded a criminal and subjected not only to unjust stigma but the complete curtailment of liberty through a prison sentence." Further, "Defendant has not demonstrated that his proposed safeguard—which amounts to exempting incompetent registrants from SORA classification for the duration of their disability—would meaningfully reduce inaccurate risk-level classifications, even if the robust existing procedures leave gaps through which a rare incompetent registrant might fall. If anything, defendant's proposal seems certain to create inaccuracy, especially with respect to registrants who meet the criteria for heightened risk levels. It would result in every incompetent registrant, including those who could justly be adjudicated level three (high risk) offenders, being treated more favorably than a level one (low risk) offender regardless of the particular circumstances or risk to the public." Finally, the Court noted, "conducting a psychiatric examination and additional hearing to determine a registrant's mental competency would impose additional burdens on the government, as would the task of continually monitoring registrants found to be incompetent over indefinite periods to determine whether they have regained fitness and can be accurately classified." Indeed, "the State also has a 'compelling interest' in protecting its citizens by promptly notifying the public of registrants who pose a heightened threat of recidivism. Delaying the classification of incompetent registrants threatens that interest, in that it risks that some dangerous registrants will be released into the community for lengthy periods without accurate risk-level designations or public notice."

# SECOND DEPARTMENT

## ELECTION LAW

### *Fossella v Adams*, 2024 NY Slip Op 00891 (Ct App Feb. 21, 2024)

**Issue**: **Does Local Law No. 11 (2022) of the City of New York, which created a new class of voters eligible to vote in municipal elections consisting of individuals who are not United States citizens and who meet certain enumerated criteria, violate the New York Constitution and Municipal Home Rule Law?**

**Facts**: In 2022, the New York City Council adopted a local law to allow lawful permanent residents in New York city to vote in municipal elections for mayor, public advocate, comptroller, borough president, and council member. Plaintiffs challenged the law as unconstitutional because it would "dramatically increase the pool of eligible voters, which will dilute the votes of United States citizens, including the voter plaintiffs, and will cause an abrupt and sizeable change to the makeup of the electorate" by more than the margin of victory in many city elections. Supreme Court granted the plaintiffs summary judgment and declared the law unconstitutional.

**Holding**: The Second Department affirmed. After holding that the voter plaintiffs had standing to assert a Municipal Home Rule Law claim and the officeholder plaintiffs had standing to assert the constitutional claims, the Court held that article II, section 1 of the New York Constitution mandates that "the right to vote in 'every election for all officers elected by the people' is available exclusively to 'citizens,' as there is no reference to noncitizens, and thus, an irrefutable inference applies that noncitizens were intended to be excluded from those individuals entitled to vote in elections." That reference to "citizens," the Court held, is to United States citizens, not just citizens of New York State, and that the requirement applied "to municipal elections, and is not limited to statewide elections." Thus, the Court held, the City local law expanding the right to vote in City elections to noncitizens violated the Constitution. The law also violated article IX of the Constitution, the Court held, because every local government must have a legislative body "elective *by the people*" and the "people" was limited to the definition of eligible voters under article II, section 1. Finally, the Court held that the "Local Law changed the method of electing an elective officer, as it created a new class of voters entitled to vote in municipal elections and changed the eligibility criteria for voting, thereby changing the election process" and, thus, a mandatory referendum was required under the Municipal Home Rule Law before the law could become effective. No such referendum was held, however.

# THIRD DEPARTMENT

## CIVIL PROCEDURE, CIVIL RIGHTS LAW

### *Matter of Cody VV. (Brandi VV.)*, 2024 NY Slip Op 00961 (3d Dept Feb. 22, 2024)

**Issue**: **Must the court records of a joint name and sex designation change proceeding be permanently sealed?**

**Facts**: Petitioners commenced a proceeding on behalf of their minor child requesting, under the Civil Rights Law, that the child's name and sex designation be changed and that the court records of the proceeding be sealed (*see* Civil Rights Law §§ 64-a, 67-b). Supreme Court granted the name and sex designation change, but declined to seal the record of the proceeding, concluding without explanation or analysis that unspecified interests of the public outweighed any safety concerns raised in the application.

**Holding**: The Third Department modified the trial court order to permanently seal the court records, which it held was mandatory under Civil Rights Law articles 6 and 6-a. In particular, the Court held, the Governor signed the Gender Recognition Act in 2021 to provide protection for "transgender and non-binary New Yorkers," including requiring courts to "immediately" seal name and sex designation change proceedings to ensure confidentiality and the safety of the applicants. As Presiding Justice Garry explained, the mandatory and immediate sealing is absolutely necessary because "[d]espite some progress in our recent past, it remains sadly true . . . that risk to one's safety is always present upon public disclosure of one's status as transgender or otherwise gender nonconforming. The Legislature recognized that disclosure of such status subjects individuals to the risk of 'hate crimes, public ridicule, and random acts of discrimination.'" These safety concerns require sealing in virtually every case, the Court explained: "although Civil Rights Law § 64-a continues to allow some limited discretion [in whether to seal] in respect to name change applications, application of the statutory terms also requires a substantial basis for finding that the public interest outweighs the need for protection; this would be the extraordinary rather than the customary case."

As a practice pointer for the trial courts and the bar, the Third Department encouraged that name and sex designation proceedings be brought on by order to show cause, rather than by notice of petition, with an immediate request to seal the proceedings, as Civil Rights Law articles 6 and 6-a require. Doing so, the Court noted will alert court clerks to the mandatory sealing immediately at the outset of the proceeding.

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