



In 2008, New York enacted a law recognizing and giving full faith and credit to foreign adoptions. The Legislature determined that New York adoptive parents shouldn't go through the formal adoption procedures abroad, receive a foreign order of adoption, and then come back to New York only to have to do the same thing all over again at significant expense. To qualify, the statute provides that the adoptive parents only have to provide the child's valid immigrant visa. But when the original immigrant visa has been lost, what are the courts to do? The Second Department answered that novel question this week. Let's take a look at that opinion and what else has been happening in New York's appellate courts over the past week.

## FIRST DEPARTMENT

### CRIMINAL LAW, *BATSON* CHALLENGE TO RACE DISCRIMINATION IN JURY SELECTION

[People v Luke, 2025 NY Slip Op 00297 \(1st Dept Jan. 21, 2025\)](#)

**Issue:** What is the proper three-step inquiry that trial courts must undertake when a *Batson* challenge is raised to alleged race discrimination in jury selection?

**Facts:** "During round one of jury selection at defendant's 2017 trial, the prosecution utilized four peremptory strikes on jurors 1, 3, 8, and 12. At the conclusion of this round, defense counsel raised a *Batson* challenge, stating: 'With respect to the jury selection, in just reviewing the People's peremptory challenges, of the four, three were African American or black, one was a Hispanic woman, or what appeared to be a Hispanic woman. I just wanted to inquire about that fact.' Without commenting on whether defendant had satisfied his prima facie burden at step one, the court immediately posited that it recognized the pattern highlighted by defense counsel. Before deciding whether a prima facie case of discrimination had been established, the court found the objection untimely because defense counsel did not raise it when the prosecution exercised the peremptory challenges and the four jurors in question had been excused." Although the prosecution offered to place its race-neutral reasons for the peremptory strikes on the record, under step two of a *Batson* analysis, the trial court did not allow it to do so. Rather, the court continued to conclude that the defense's objection had been untimely, and even if it wasn't, the jurors had already been excused, couldn't be reseated, and no other relief besides a mistrial was available. Since the defense specifically declined to request a mistrial, the court advise the defense to monitor the remainder of jury selection closely for any other *Batson* challenges. Ultimately, defendant was convicted following trial.

**Holding:** The First Department held that the trial court's conduct completely sidestepped the required *Batson* analysis when a defendant raises a claim of race discrimination in the use of peremptory challenges to jurors. The Court explained:

"*Batson* established a three-step test for determining whether peremptory strikes are based on invidious discrimination. Invariably, courts, as arbiters of the law, are tasked with enforcing the *Batson* framework, at every step of the process. At step one, the party raising a *Batson* challenge must establish a prima facie case of racial discrimination in a manner that allows the judge to infer discriminatory purpose. Once a prima facie case of discrimination has been established, the burden shifts, and at step two, the nonmovant is to provide racially neutral explanations for the challenges. At step three, the burden shifts back to the movant to prove purposeful discrimination or that the proffered reasons are merely a pretext for intentional discrimination. Then the court determines if the nonmovants race-neutral explanations were sufficient.

The Court of Appeals has cautioned trial courts against exercising 'undue haste' in deciding *Batson* objections as doing so falls short of the 'meaningful inquiry into the question of discrimination' that *Batson* requires. More recently, the Court made it abundantly clear that a departure from the essential protocol of *Batson* is an error of the highest order. Thus, the three distinct steps of the *Batson* framework are not to be skipped, merged, or, as in this case, completely disregarded."

Here, the Court concluded, "the trial court enacted an arbitrary procedure that focused on the remedy and failed to address whether defendant had established a prima facie showing of discrimination or whether the prosecution's explanation was pretextual." Allowing a conviction following such an error to stand, the Court noted, would effectively render "*Batson* and its progeny become a metaphorical dog with no bite." And the Court explained, contrary to the trial court's conclusion, several remedies exist for a *Batson* violation beyond merely granting a mistrial: "the offender could forfeit its peremptory challenges, or the court could award more peremptory challenges

to the non-offender. This Court has also held that a trial court could attempt to locate the otherwise released jurors as a viable remedy.” Thus, the Court reversed defendant’s conviction and remitted for a new trial

## SECOND DEPARTMENT

### FAMILY LAW, ADOPTION

*Matter of Lily, 2025 NY Slip Op 00448 (2d Dept Jan. 29, 2025)*

**Issue:** Does Domestic Relations Law § 111-c permit New York State to register a foreign adoption if the applicant is no longer in possession of the required immigrant visa?

**Facts:** The adoptive mother of a child from China petitioned to register her foreign adoption and for an order of adoption in New York, but noted that in the 15 years following her adoption, “the child’s original Certificate of Citizenship and Chinese passport that contained her immigrant visa had been lost.” The mother provided instead a “a copy of a replacement Certificate of Citizenship, which was issued by the United States Citizenship and Immigration Services,” which “confirmed that the child became a citizen of the United States on June 20, 2008.” Surrogate’s Court, however, denied the petition, without prejudice, because “it could not determine the validity of the foreign adoption without review of the child’s immigrant visa.”

**Holding:** The Second Department held that, under the circumstances of this case of first impression, Surrogate’s Court should have granted the order of adoption. The Court noted that Domestic Relations Law § 111-c was adopted in 2008 to give full faith and credit to foreign adoption orders, without requiring the adoptive parents to go through duplicative adoption proceedings when they returned to New York with the adopted child. Thus, section 111-c provides that a foreign adoption order must be recognized in New York so long as “(a) either adopting parent is a resident of this state; and (b) the validity of the foreign adoption has been verified by the granting of an IR-3, IH-3, or a successor immigrant visa, for the child by the United States Citizenship and Immigration Services.” The Court explained, “[c]hildren who are adopted abroad are granted either an IR-3 or an IH-3 immigrant visa prior to their entrance to the United States. According to the website of the USCIS, . . . a child admitted to the United States with an IR-3 or IH-3 immigrant visa who . . . resides in the United States and otherwise fulfills the conditions of the Child Citizenship Act, will automatically become a United States citizen and receive a Certificate of Citizenship in the mail. Adopted children who are granted an IR-4, IH-4, or IR-2 immigrant visa first receive a permanent resident card and have to apply for a Certificate of Citizenship.”

Here, although the adoptive mother was unable to provide the child’s original immigrant visa, notwithstanding her diligent efforts to locate it, she “provided an affidavit averring that the child had been issued the relevant immigrant visa and a copy of the replacement Certificate of Citizenship, issued by USCIS, showing that the child became a United States citizen only nine days after her adoption. The record shows that the child would not have been able to automatically obtain a Certificate of Citizenship if she had not possessed the appropriate immigrant visa. Under these circumstances, we conclude that the foreign adoption order meets the requirements of Domestic Relations Law § 111-c(1), including the requirement that ‘the validity of the foreign adoption has been verified by the granting of an IR-3, IH-3, or a successor immigrant visa.’”

## THIRD DEPARTMENT

### TORTS

*Mancino v Town of Glenville, 2025 NY Slip Op 00357 (3d Dept Jan. 23, 2025)*

**Issue:** May a cause of action be maintained for the alleged negligent failure to follow police protocols in investigating criminal activity?

**Facts:** “Plaintiff, a police officer and member of the military, and his estranged wife were involved in an incident at plaintiff’s residence that resulted in plaintiff calling the Glenville Police Department. The police investigated and prepared an incident report naming plaintiff as the victim and the wife as the suspect. The police later created a second report referring to plaintiff as an additional suspect. According to plaintiff, the wife used the second report to obtain an order of protection against him, resulting in the confiscation of his personal firearms, the restriction of his use of firearms in connection with his employment and damage to his reputation.” Plaintiff then sued the Town of Glenville and the police department, alleging that “the methods utilized by the police in investigating the incident violated accepted policing standards, rules, regulations and protocols.” Supreme Court dismissed the claims against the police department, because it was not a separate entity subject to suit, and dismissed the claim for negligent investigation, “but went on to find that the purported failure to follow acceptable police practices could give rise to a separate cause of action.”

**Holding:** The Third Department reversed, and dismissed the complaint in its entirety. Noting that New York does not recognize a cause of action for negligent investigation, the Court held that Supreme Court erred in holding that any colorable claim remained. Even assuming that the failure to follow police practices and protocols could give rise to a claim, the Court held that plaintiff was required to plead that defendants, which were acting in their governmental capacity of providing police services, owed him a special duty. “A special duty may arise in three situations: where (1) the plaintiff belonged to a class for whose benefit a statute was enacted; (2) the government entity

voluntarily assumed a duty to the plaintiff beyond what was owed to the public generally; or (3) the municipality took positive control of a known and dangerous safety condition. Here, the complaint contains no allegations of a special duty owed by defendants to plaintiff pursuant to any of the above-described circumstances, thereby mandating dismissal of the complaint in its entirety.”

CasePrepPlus | January 31, 2025  
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