



Rounding out the summer opinions before the courts head back into new argument sessions in September, the Appellate Division, Second Department recently examined whether the provision of the Sex Offender Registration Act that requires an offender who committed an offense outside the state to register in New York as a sexually violent offender, even if the underlying offense did not involve any element of violence, complied with substantive due process. 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

### IN REM CIVIL FORFEITURE, EXCESSIVE FINES

*City of New York v Jones*, 2025 NY Slip Op 04842 (1st Dept Sept. 04, 2025)

**Issue:** Does the provision of the New York City Administrative Code that authorizes civil forfeiture of a \$40,000 food truck for violations for food vending without a license from his truck, selling food from an unapproved or unknown source, and not having food service operations separated from living or sleeping quarters in the vehicle violate the excessive fines clauses of the state and federal Constitutions?

**Facts:** "[A] New York City Department of Health inspector issued summonses to defendant Thomas Stevenson Jones for food vending without a license from his truck, selling food from an unapproved or unknown source, and not having food service operations separated from living or sleeping quarters in the vehicle. At a subsequent hearing before the Office of Administrative Trials and Hearings (OATH), Jones admitted to these violations and OATH imposed fines on him totaling \$2,600. The City then commenced this proceeding in Supreme Court pursuant to Administrative Code of City of NY §§ 17-321(c) and 17-322 to seize and order forfeiture of Jones' truck." Section 17-321(c)(iii) of the New York City Administrative Code authorizes seizure of a food vending vehicle being used by an unlicensed vendor and any food being offered for sale. That sanction is provided in addition to the applicable misdemeanor with a fine of up to \$1,000, imprisonment for up to three months, or both.

"The motion court denied the City's motion for summary judgment on the grounds that there are questions of fact as to: (1) whether the forfeiture provision at issue is punitive in nature; and (2) whether the value of the property seized is so disproportional to the fines imposed and any harm to society that it violates the excessive fines clauses of the New York and United States Constitutions."

**Holding:** The Appellate Division, First Department affirmed, agreeing that Mr. Jones raised questions of fact regarding whether the proposed forfeiture of his food truck violates the excessive fines clause of the state and federal Constitutions. The Court explained, state and federal precedent has held that "civil in rem forfeitures are subject to the protection of the excessive fines clause when they are at least partly punitive. When forfeiture serves, at least in part, deterrent and retributive purposes, it is punitive. Forfeiture generally and statutory in rem forfeiture in particular historically have been understood, at least in part, as punishment. That determination can be based on the presence of many factors, some of which are present here. In particular, courts have found forfeiture to be at least partially punitive where it is tied directly to commission of a criminal offense; where possession of the forfeited property itself is not a crime, so that removing it from the owner's possession serves no remedial public health or safety purpose; where there are dramatic variations in the value of forfeitable property; where the value of the forfeited property does not correlate with any harm caused to society or the cost of enforcement; and where forfeiture has been characterized as a deterrent."

Here, the Court emphasized, possession of a food truck is not a crime, so removing it from Mr. Jones' possession does not serve the public health or welfare. The Court also concluded that "Jones' claim that the forfeited vehicle is worth \$40,000 demonstrates that the statute at issue here provides for forfeiture of property that may have dramatic variations in the value, calling into question whether its forfeiture serves a purely remedial purpose or is at least partly punitive. Moreover, since the statute already provides that the City may charge the unlicensed food vendor whose property has been seized reasonable costs for removal and storage payable prior to the release of such food, vehicle or pushcart, forfeiture of the vehicle appears to have little, if any, correlation to the cost of enforcement." Finally, the Court reasoned that the legislative history underlying the Administrative Code forfeiture provisions suggested that its purpose was at least in part, to "serve the traditionally punitive goal of deterrence." Indeed, the Mayor and City Council at the time supported the bill as a measure to "driv[e] an estimated 10,000 illegitimate peddlers from the city's streets through severe penalties, including fines, forfeiture of goods and even prison terms for unlicensed peddlers." Therefore, the Court held, Mr. Jones also raised issues of fact as to whether imposing a forfeiture on his property, which had a value far in excess of both the fines imposed and any damage to society, violated the excessive fines clauses of the New York State and US Constitutions."

# SECOND DEPARTMENT

## CRIMINAL LAW, SEX OFFENDER REGISTRATION ACT, SUBSTANTIVE DUE PROCESS

*People v Edwards*, 2025 NY Slip Op 04922 (2d Dept Sept. 10, 2025)

**Issue:** Did Correction Law § 168-a(3)(b), which required the defendant to be designated as a sexually violent offender as a result of criminal conduct that occurred outside of New York, and would not otherwise have resulted in such designation if the same conduct occurred within the State, violate State and federal constitutional guarantees of substantive due process?

**Facts:** Defendant pled guilty to “one count of lewd or lascivious battery” in Florida, after he, a 22-year-old, engaged in sexual contact with a 13-year-old victim. Defendant was sentenced to five years of sex offender probation and was required to register as a sex offender in Florida. Eventually, Defendant moved to New York, and the New York State Board of Examiners of Sex Offenders determined that he was required to register as a sex offender in New York as well. Both the Board and the People recommended that Defendant be designated a level one sex offender based on his Florida conviction.

The People also provided notice that, under Correction Law § 168-a(3)(b), they would “seek a sexually violent offender designation for the defendant based on the out-of-state conviction,” regardless of whether that offense would have qualified as a violent sex offense had it been committed in New York. Defendant objected, arguing that Correction Law § 168-a(3)(b)’s foreign registration requirement violated his due process rights. County Court, following the SORA hearing, determined that Defendant had to be “designated as a sexually violent offender because of the out-of-state conviction.”

**Holding:** The Appellate Division, Second Department reversed, holding that, as applied to Defendant in the circumstances of this case, Correction Law § 168-a(3)(b)’s foreign registration requirement violated substantive due process. The Court explained, “[s]ubstantive due process prohibits the State from infringing upon a fundamental liberty interest unless the infringement is narrowly tailored to serve a compelling state interest. However, where no fundamental right is infringed upon, legislation is valid if it is rationally related to legitimate government interests . . . The Court of Appeals has characterized a defendant’s liberty interest in not being subject to SORA as equivalent to not having a misleading label attached to one’s serious crime, and has held that such an interest is not fundamental for the purposes of evaluating a related substantive due process claim. Thus, in this case, because the substantive due process right implicated by the defendant’s designation as a sexually violent offender is not fundamental, the challenged provision of the Correction Law, insofar as applied to the defendant, must be upheld if it is rationally related to a legitimate government interest.”

Correction Law § 168-a(3) contains three different definitions of a “sexually violent offense.” “First, a sexually violent offense is one of several felony offenses enumerated in the Penal Law. Second, a sexually violent offense is a conviction of an offense in any other jurisdiction which includes all of the essential elements of any such enumerated felony. Third, as relevant here, a sexually violent offense is a ‘conviction of a felony in any other jurisdiction for which the offender is required to register as a sex offender in the jurisdiction in which the conviction occurred.’” Thus, under the plain text of the statute, any conviction for a sex offense in a foreign jurisdiction requires the offender to be designated a sexually violent offender in New York, regardless of whether the underlying foreign offense involved an element of violence. In fact, the Court noted, “both a ‘sex offense’ and a ‘sexually violent offense’ are defined by the same language with respect to felony convictions in out-of-state jurisdictions that require sex offender registration in those jurisdictions.”

Analyzing whether this requirement violated Defendant’s substantive due process rights, the Court held that the foreign registration clause is not rationally related to a legitimate governmental interest. In particular, the Court explained, “we agree with the Appellate Division, Fourth Department’s conclusion that, ‘[d]esignating a defendant as sexually violent merely because he or she had an out-of-state sex conviction requiring out-of-state registration, regardless of whether that underlying offense is violent—as is currently required by the text of Correction Law § 168-a(3)(b)—bears no rational relationship to the legitimate governmental interest of informing the public of threats posed by sex offenders.’ In fact, labeling a defendant as a sexually violent offender regardless of whether the underlying offense involved violence may have the adverse effect of misleading the public as to the level of risk posed by him or her. Moreover, the government’s interest in protecting the public from the potential harm posed by sex offenders is already served by requiring a defendant to register in New York as a sex offender.”

The Court also rejected the People’s argument that “the foreign registration clause is rationally related to the legitimate government interest of bringing New York into compliance with the federal law that conditions federal funding on the establishment of the sex offender registration framework” because “[t]he federal requirements are fulfilled by requiring out-of-state sex offenders to register as sex offenders when they move into New York according to their appropriate risk level. SORA’s additional requirement that an out-of-state sex offender’s status automatically transmutes into that of a sexually violent offender simply by virtue of moving to New York is not rationally related to any federal requirement.”

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