

State of New York Court of Appeals

Summaries are prepared based on the parties' briefs and are for background purposes only.

To be argued Thursday, May 21, 2026

Volokh v James (148 F4th 71 [Second Circuit])
Court PASS Docket No. CTQ-2025-00006

The U.S. Court of Appeals for the Second Circuit asked the New York State Court of Appeals to interpret parts of General Business Law § 394-ccc, a 2022 statute enacted as a result of a mass shooting in Buffalo. In that tragedy, the gunman used social media to post a manifesto and livestream part of the attack.

The law requires social media networks operating in New York to (1) provide a way for individual users to report incidents of “hateful conduct” and (2) have a clear and concise policy on their platform that includes how the network will respond and address reports of incidents of “hateful conduct.”

Hateful conduct is defined as the use of a social media network to vilify, humiliate, or incite violence against a group or a class of persons based on race, color, religion, ethnicity, national origin, disability, sex, sexual orientation, gender identity or gender expression. The law also says it should not be construed to impose obligations that “adversely affects the rights or freedoms of any persons, such as exercising the right of free speech pursuant to the First Amendment to the United States Constitution.”

The Attorney General is authorized to investigate violations, issue subpoenas and impose civil penalties up to \$1,000 per day for knowing noncompliance.

Plaintiffs—law professor Eugene Volokh and two social media companies, Rumble Canada and Locals Technology—sued the Attorney General, arguing the law is unconstitutional because it regulates and compels speech. The federal district court agreed and preliminarily enjoined enforcement.

On appeal, the Attorney General argued the law is a consumer-information measure, not a speech regulation. According to the State, platforms may comply without referencing “hateful conduct” at all: a general reporting tool, such as a general email address, would suffice if it could accept reports of hateful conduct, and platforms disclose any content-moderation policy they choose, including one stating they will not respond to reports. The State contends § 394-ccc does not require platforms to respond to reports.

Respondents countered that the statute mandates engagement with the State-defined category of “hateful conduct.” They argued that the reporting and policy disclosure parts are tied to that term and therefore cannot be satisfied by generic tools or policies. They further contended that the law’s purpose and legislative history show it was designed to pressure platforms to address disfavored speech, rendering the law unconstitutional.

The Second Circuit found the statute’s meaning central to resolving the constitutional challenge and certified questions of statutory interpretation to the New York Court of Appeals.

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Reyes v City of New York ([Second Circuit])
Court PASS Docket No. CTQ-2025-00004

New York State's Right to Record Law (RTRL) (Civil Rights Law § 79-p) provides that a person not under arrest or in custody has the right to record law enforcement activity. New York City has a similar RTRL (NYC Admin. Code § 14-189). Both laws provide a private right of action, allowing a person who can establish unlawful interference with that right to seek damages.

The New York Police Department's (NYPD) Precinct Policy states that members of the public are not permitted to photograph or record police activity within any NYPD facility, including publicly accessible lobbies. The policy outlines a three-step enforcement process: an officer may order the person to stop recording; direct the person to leave the premises if they don't stop; and take proper enforcement action under trespass statutes if they don't leave.

SeanPaul Reyes, a YouTube-based "First Amendment auditor," entered NYPD precinct lobbies in 2023 while recording. NYPD officers ordered him to stop, citing the Precinct Policy, and arrested him when he refused to leave. All criminal charges were later dismissed. Reyes sued in federal court, arguing that the state and city RTRLs authorize recording police activity in any location open to the public, including precinct lobbies.

The City countered that the RTRLs do not override the longstanding common-law right of property owners—including government agencies—to regulate conduct on their premises and to exclude those who disregard lawful rules. The City asserted that the RTRLs' legislative history shows lawmakers intended only to codify the First Amendment right to record in traditional public places such as streets, sidewalks, and parks, and not inside police facilities.

The federal district court upheld the Precinct Policy under the First Amendment but ruled that the RTRLs likely prohibit the NYPD from enforcing the recording ban. The court issued a preliminary injunction directing the NYPD to not enforce the policy.

On appeal, the U.S. Court of Appeals for the Second Circuit certified the following question to the New York State Court of Appeals:

“Does either [New York or New York City Right to Record Law] afford individuals such as plaintiff Reyes the right to video record law enforcement activities inside public facilities—specifically, inside the publicly accessible lobbies of police stationhouses—notwithstanding a New York City Police Department policy forbidding any video recording inside its facilities?”

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People v Kelley (Anton) (239 AD3 1269 [AD4])
Court PASS Docket No. APL-2025-00179

In the early morning of July 23, 2016, a Syracuse resident called 911 after hearing a gunshot outside her home. Police arrived to find a victim fatally shot on the sidewalk.

In 2019, Anton Kelley was arrested and interrogated. A grand jury indicted him on charges of murder in the second degree and criminal possession of a weapon in the second degree.

Before trial, Mr. Kelley repeatedly complained that his assigned attorney failed to communicate with him. In 2020, he requested new counsel. Concluding that Mr. Kelley's actions were a delay tactic, the trial court denied the request and ordered assigned counsel to continue.

During trial, Mr. Kelley pleaded guilty to first-degree manslaughter and waived his right to appeal. Mr. Kelley moved to withdraw his guilty plea. The trial court assigned new counsel for the motion, but denied it.

Mr. Kelley appealed, arguing that the trial court failed to conduct an appropriate inquiry into his requests for new counsel and that he did not receive effective assistance of counsel.

The Appellate Division, Fourth Department, affirmed. It held that, to the extent Mr. Kelley's arguments regarding the denial of new counsel implicated the voluntariness of his plea, he abandoned those requests by pleading guilty while represented by the same attorney. The court also noted that Mr. Kelley did not express dissatisfaction with counsel during the plea colloquy. The court further held that Mr. Kelley's ineffective-assistance claim did not survive his guilty plea or his waiver of the right to appeal because there was no showing that the plea-bargaining process was infected by the alleged ineffectiveness or that he entered the plea because of counsel's purported poor performance.

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People v Fernandez (Andre) (236 AD3d 527 [AD1])
Court PASS Docket No. APL-2025-00133

In 2007, Andre Fernandez contacted the Bronx Homicide Task Force claiming he had information about two unsolved murders. At the precinct, he provided written and videotaped statements describing his involvement in a 1998 shooting during a robbery and a 2003 shooting. Mr. Fernandez was charged with second-degree murder and other crimes.

Mr. Fernandez moved to suppress his statements, alleging they were false and had been induced by a prosecutor's statement that Mr. Fernandez would receive immunity and payment for his information. He testified that he wrote a note with these terms after speaking with a prosecutor. A handwritten note requesting immunity and payment was found in law enforcement's files and introduced at the suppression hearing. The court denied the motion to suppress.

Following trial, a jury convicted Mr. Fernandez of two counts of murder in the second degree. At sentencing, Mr. Fernandez's trial counsel informed the court that Mr. Fernandez had just disclosed new information—that he had previously been found not competent to stand trial in another state following psychiatric evaluations. Trial counsel requested a competency hearing and asked to be relieved. The court denied the requests and sentenced Mr. Fernandez to 50 years to life.

Mr. Fernandez appealed. His appellate counsel moved to vacate the conviction pursuant to CPL 440.10, arguing that trial counsel was ineffective for failing to investigate Mr. Fernandez's impaired mental state at the time of his statements to law enforcement and for pursuing an uninformed defense strategy that prejudiced Mr. Fernandez.

The court denied the CPL 440.10 motion, finding trial counsel's strategy—to argue police inducement rather than mental impairment—was reasonable.

The Appellate Division unanimously affirmed the conviction and the denial of the CPL 440.10 motion, holding Mr. Fernandez received effective assistance of trial counsel and had now shown that any of trial counsel's alleged deficiencies fell below an objective standard of reasonableness.

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People v Guerra (Diego) (231 AD3d 852 [AD2])
Court PASS Docket No. APL-2025-00080

In January 2017, an NYPD detective assigned to investigate online child-exploitation offenses used law-enforcement software to search a peer-to-peer file-sharing network. The software downloaded videos containing child sexual abuse material from an IP address associated with a multi-tenant residence in Queens. In July 2017, the NYPD executed a search warrant at the three-family house in Queens linked to that IP address. The house had been subdivided into individual rooms rented to numerous tenants, with shared kitchens and bathrooms. Officers seized a laptop from the second-floor room rented by Diego Guerra and a roommate. Mr. Guerra told officers he repaired computers and had found the laptop in the garbage a few months earlier; he said it was already connected to the building's Wi-Fi when he picked it up.

During the forensic examination, no viewable images or videos of child sexual abuse were found on the laptop. Instead, investigators found that the only child-sexual-abuse material was in the laptop's unallocated space, meaning it was not accessible to an ordinary user. Investigators also determined that a USB drive had previously been connected to the laptop and used as the device running the file-sharing software. That USB drive was not recovered from Mr. Guerra's room.

Mr. Guerra was charged with multiple counts of promoting a sexual performance by a child and possessing a sexual performance by a child. Before trial, Mr. Guerra's counsel and the People stipulated that (1) the videos depicted and promoted a performance including sexual conduct by a child; (2) whoever possessed the videos promoted a performance with knowledge of the character and content of such videos; and (3) whoever possessed the videos knowingly had them in their possession or control. The stipulation also limited the number of images that would be shown to the jury. Trial counsel pursued a defense that Mr. Guerra lacked knowledge of the materials because multiple people lived in the residence, the laptop was not password-protected, and others could have used it.

A jury convicted Mr. Guerra. On appeal, Mr. Guerra argued that trial counsel was ineffective for agreeing to a stipulation that conceded elements of the crimes.

A majority of the Appellate Division, Second Department, reversed the conviction and ordered a new trial. The majority held that defense counsel was ineffective because the stipulation included incorrect and prejudicial language—that whoever possessed the material necessarily did so knowingly—that eliminated the mens rea element and were not part of any legal strategy or tactic. Two Justices dissented, opining that counsel's performance was not ineffective. They reasoned that the stipulation was part of a strategy to narrow the issues for the jury and limit the amount of prejudicial material shown, and that counsel focused on whether Mr. Guerra possessed the images at all.