State of New York
Court of Appeals

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NEW YORK STATE COURT OF APPEALS

Background Summaries and Attorney Contacts

May 14 thru May 15, 2025

State of New York
Court of Appeals

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To be argued Wednesday, May 14, 2025

No. 53 People ex rel. Welch v Maginley-Liddie

Christopher Ortiz was charged with attempted murder in the Bronx in 2022, then was released on bail. While still out on bail in the Bronx case in 2023, Ortiz was arrested in Queens on felony charges of possession of stolen property and identity theft. He and two accomplices allegedly stopped a man's car, drove him to a bank and made him withdraw $1,000, then took the cash and his debit card.

At his arraignment, the prosecutor applied to set bail under Criminal Procedure Law (CPL) 510.10(4)(t), a 2020 amendment called the "harm on harm provision," which gives judges discretion to set bail "where the principal stands charged with a qualifying offense." It states that a "principal stands charged with a qualifying offense" when charged with "any felony or class A misdemeanor involving harm to an identifiable person or property ... where such charge arose from conduct occurring while the defendant was released on his own recognizance [or] released under conditions ...for a separate felony or class A misdemeanor involving harm to an identifiable person or property." It further provides that "the prosecutor must show reasonable cause to believe that the defendant committed the instant crime and any underlying crime." Criminal Court set cash bail at $50,000, which Ortiz was unable to post.

Ortiz's attorney, Danielle Welch, brought this habeas corpus petition on his behalf at the Appellate Division, Second Department, arguing that CPL 510.10(4)(t) did not apply to him because, in the underlying Bronx case, he had not been "released on his own recognizance [or] released under conditions," but instead had posted bail. Ortiz says that "throughout the statute, 'conditions' is used as a specific term of art relating to restrictions imposed upon a person as an alternative to – or in addition to – cash bail." Even if the statute would otherwise apply to a defendant charged with a qualifying offense while free on bail for a prior offense, he argues the prosecution failed to establish reasonable cause to believe he committed the underlying Bronx offense because it relied solely "on the existence of an out-of-county indictment appearing on a RAP sheet."

The Appellate Division dismissed his application for the writ, saying CPL 510.10(4)(t) authorized bail on the Queens charges because Ortiz "was charged with felony offenses that 'arose from conduct occurring' while he was 'released under conditions' of monetary bail on separate felony charges.... [Ortiz], in contending that CPL 510.10(4)(t) is applicable only to principals released on their own recognizance or released under non-monetary conditions, seeks to read the term 'non-monetary' into the statute, excluding bail as a condition. However, CPL 510.10(4)(t) is the only statute within CPL article 510 to use the term 'conditions' without the use of the modifier 'non-monetary,' evidencing the intent of the Legislature to apply that statute to all conditions of release rather than only non-monetary conditions."

For appellant Ortiz: Danielle Welch, Kew Gardens (646) 430-0699
For respondent Maginley-Liddie: Queens Asst. Dist. Atty. William H. Branigan (718) 286-6652

State of New York
Court of Appeals

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To be argued Wednesday, May 14, 2025

No. 54 People ex rel. Ellis v Imperati

Michael Cavagnolo was charged with making a terroristic threat in March 2024, after he allegedly called the emergency line at the Hyde Park Police Department multiple times, threatening to kill police officers and their families and blow up the police building. At his bail hearing, he argued the court lacked authority to set bail under Criminal Procedure Law (CPL) 510.10(4) because subdivision (g) of the statute specifically excludes making a terroristic threat as a bail-qualifying offense. The prosecutor argued that subdivision (a) of the statute makes a terroristic threat a bail-eligible offense along with other violent felonies enumerated in Penal Law § 70.02.

Dutchess County Court set cash bail at $50,000. In light of subdivision (a), which makes violent felonies eligible for bail, the court said "it does seem to defy logic to me that a threat of this kind would have been excluded" in subdivision (g). "I'm going to err on the side of caution in light of the discrepancy in the statute to find this to be a qualifying offense that it had to have been a mistake. It makes zero sense to me that this would be excluded as a bail-eligible offense in light of the fact that it is a violent felony."

Cavagnolo's attorney, Andrew Ellis, filed this petition for a writ of habeas corpus on his behalf against Dutchess County Sheriff Kirk Imperati, seeking his release on nonmonetary conditions on the ground that making a terroristic threat was not a qualifying offense for bail.

The Appellate Division, Second Department granted the writ on a 3-1 vote and ordered Cavagnolo released on his own recognizance, subject to conditions. The court said CPL 510.10(4) "provides conflicting provisions as to whether making a terroristic threat constitutes a qualifying offense for which bail may be fixed." Invoking the principle that when there is a general and a specific provision in the same statute, the general applies only where the particular does not, it said subdivision (a) "is a general provision insofar as it provides that all violent felony offenses, with two exceptions, constitutes qualifying offenses" and subdivision (g) "is specific insofar as it expressly exempts making a terroristic threat ... from the list of violent felony offenses that constitute qualifying offenses. Applying this principle of statutory construction, the specific provision of CPL 510.10(4)(g) that expressly exempts making a terroristic threat from the list of ... qualifying offenses controls." It said the contrary view "would render that provision's exclusion of making a terroristice threat superfluous...."

The dissenter said the conflict between subdivisions (a) and (g) is "a conflict between two specific provisions" which renders the statute ambiguous, and the favored interpretation "is the one which will not cause objectionable results." "I find it significant that [subdivision (a)] expressly excepts two violent felony offenses, but does not except making a terroristic threat," supporting "the conclusion that, '[i]f the legislature had intended to exempt the violent felony offense of making a terroristic threat, it would have been included in the exclusionary language' in paragraph (a). Thus, the language of paragraph (a) reflects a legislative intent to include making a terroristic threat a qualifying offense."

For appellant Imperati: Dutchess County Assistant District Attorney Anna Diehn (845) 486-2300
For respondent Cavagnolo: Andrew Ellis, Poughkeepsie (845) 249-4545
For amicus State: Assistant Solicitor General Grace X. Zhou (212) 416-6160

State of New York
Court of Appeals

To be argued Wednesday, May 14, 2025

No. 55 People v Christopher Baldner

Christopher Baldner was a State Police trooper in December 2020, when he engaged in a high speed chase on the Thruway in Ulster County that resulted in the death of an 11-year-old girl. He had stopped an SUV driven by Tristan Goods for speeding and the two men began arguing. Baldner pepper-sprayed the passenger cabin and Goods took off at high speed with his wife and two daughters. Baldner caught up to Goods and, without activating his siren, struck the rear of the SUV with his bumper at 130 miles per hour. The SUV fishtailed, but drove on, and Baldner struck it again, this time at 100 miles per hour, causing Goods to lose control. The vehicle flipped over and came to rest upside down beside the roadway; the girl's body was found in the wreckage. Baldner told a dispatcher and a sergeant that the SUV initiated both collisions.

Baldner was involved in a similar chase in September 2019, when he stopped a speeding minivan driven by Jonathan Muthu on the same stretch of Thruway. Muthu, who had marijuana in his van, fled the traffic stop with two adult passengers. Baldner caught up and struck the rear of the minivan, causing it to spin off the roadway and hit the guardrail. Baldner then drove head-on into the minivan, pulled his gun, and ordered Muthu and his passengers to lie on the ground. He reported that Muthu had initiated contact with his car when Muthu lost control.

Baldner was indicted for second-degree murder and six counts of first-degree reckless endangerment, all based on the theory that he acted with depraved indifference to human life.

County Court granted his motion to dismiss the murder charge and reduce the reckless endangerment counts to second-degree, finding there was no evidence of depraved indifference, "which reflects a wanton cruelty, brutality or callousness, combined with an utter indifference to whether a victim lives or dies." It said "the evidence rationally supports only the conclusion that this defendant ignored agency protocols and exercised extremely poor judgment in a foolish attempt to perform his job as a police officer as he saw it – in short, that he acted recklessly."

The Appellate Division, Third Department reversed on a 4-1 vote and reinstated the depraved indifference murder and reckless endangerment charges, saying, "Although 'the mens rea of depraved indifference will rarely be established by risky behavior alone'..., intentionally colliding with occupied vehicles traveling 70 to 100 miles per hour comes close.... Viewed in the light most favorable to the People..., the grand jury could rely on ... evidence indicating that, after both incidents, 'defendant exhibited no signs of remorse for the results of his recklessness' as proof that he hit the minivan in 2019 and the SUV in 2020 with an utter disregard for the value of the human lives within them...."

The dissenter said "the grand jury could readily conclude that defendant acted recklessly in both incidents by executing unauthorized maneuvers to end the chases and placing the occupants of the vehicles he was pursuing at risk of death," but argued the evidence fell well short of establishing depraved indifference. "Attempting to end a dangerous high-speed chase, even if accomplished in a manner that places the occupants of the fleeing vehicle at risk, 'permits only the inference that defendant, while reckless, consciously avoided risk, which "is the antithesis of a complete disregard for the safety of others"....'

For appellant Baldner: John Ingrassia, Newburgh (845) 566-5345
For respondent: Assistant Deputy Attorney General Matthew Keller (212) 416-8022

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To be argued Wednesday, May 14, 2025

No. 56 Matter of Parents for Educational and Religious Liberty in Schools v Young

The petitioners – Parents for Educational and Religious Liberty in Schools (PEARLS) and two other organizations representing Jewish day schools and parents of their students, and five yeshivas – brought this suit against the State Education Department (SED) and its Commissioner to challenge new regulations governing the assessment of whether religious and private schools are providing "substantially equivalent" instruction to that offered by local public school districts as required by the state's compulsory education law, Education Law article 65. The law was amended in 2018 to establish criteria for assessing the substantial equivalency of certain nonpublic schools and to empower the Education Commissioner to make the determination. The challenged regulations took effect in 2022.

Supreme Court found the new regulations to be valid except for two provisions, 8 NYCRR 130.6(c)(2)(I) and 130.8(d)(7)(I), which provide that when a nonpublic school is found not to be providing substantially equivalent instruction, it "shall no longer be deemed a school which provides compulsory education fulfilling the requirements of" the Education Law and the parents of those students must "enroll their children in a different appropriate educational setting, consistent with Education Law § 3204." The court said those provisions conflict with the purpose of the compulsory education law and exceed SED's rule-making authority because they "force parents to completely unenroll their children from a nonpublic school that does not meet all of the criteria for substantial equivalency, thereby forcing the school to close its doors."

The Appellate Division, Third Department modified on a 4-1 vote by declaring those regulations valid. It said they are "a direct, measured exercise of the Commissioner's vested authority to determine whether a nonpublic school is in compliance with the substantial equivalency requirement, and to supervise the enforcement of this standard." It said "the loss of status as a substantially equivalent nonpublic school is not equivalent to closure; the institutions may in fact continue to operate and provide some form of instruction. Contrary to the concerns raised in the dissent, the Education Law, and the corresponding regulations, do not limit the parents' opportunity to enroll their children in any extracurricular instruction or activities that they deem appropriate and helpful ... –the sole limitation is that the statutory mandate must be met."

The dissenter said, "The Education Law has consistently placed the burden of ensuring that children receive an appropriate education upon their parents and guardians – not schools – and the statutory amendments which eventually led to the regulations at issue here did not authorize consequences for nonpublic schools that are deemed to provide less than a substantially equivalent education." He said "the statutory framework affords parents ... wide discretion in fashioning an acceptable program of instruction, be it in a nonpublic school, homeschooling or a mixture of the two, that fulfills their duty of providing an education to children under their care that is substantially equivalent to that available in public schools...," but does not authorize SED to withhold funds from non-equivalent schools or require parents to enroll children elsewhere.

For appellants PEARLS et al: Avi Schick, Manhattan (212) 248-3140
For respondents State Ed et al:: Assistant Solicitor General Beezly J. Kiernan (518) 776-2023

State of New York
Court of Appeals

To be argued Thursday, May 15, 2025

No. 57 Matter of Bentkowski v City of New York

For many years New York City offered eligible retirees health coverage through traditional Medicare benefits and a choice of Medigap supplemental plans paid for up to a statutory cap by the City. Most retirees enrolled in Senior Care Medigap, which the City paid in full. The City began negotiating a new healthcare plan with the Municipal Labor Committee in 2018, and ultimately adopted a new Medicare Advantage Plan (MAP) administered by Aetna to replace Senior Care Medigap. Retirees could opt out of Aetna MAP and retain their prior health coverage, but would be required to pay for Medicare Part B and supplemental plans themselves.

The NYC Organization of Public Service Retirees and nine individual New York City retirees filed this suit to prevent the City from ending their Medigap insurance and enrolling them in Aetna MAP, claiming the City was required to continue their coverage under the doctrine of promissory estoppel. In support of the claim, they submitted hundreds of affidavits from City retirees, former officials and healthcare experts, including a former Deputy Mayor for Health and Human Services, who said, "Every year for more than 50 years" the City informed employees that they would have the option of Medicare plus City funded Medigap and said this was an "essential recruiting and retention tool." Healthcare experts said privatized MAP plans like Aetna MAP provide more limited access to a network of providers, require prior approval for treatment, and often delay or deny approval.

Supreme Court permanently enjoined the City from making the change to Aetna MAP, ruling it was barred by the doctrine of promissory estoppel and the City's Administrative Code.

The Appellate Division, First Department affirmed, saying, "The City has made clear, consistent, unambiguous representations – oral and written – over the course of more than 50 years, that New York City municipal worker-retirees would have the option of receiving health care in the form of traditional Medicare with a City-paid supplemental plan. Consequently, the City cannot now mandate the proposed change eliminating that choice." While promissory estoppel is generally unavailable against a government agency engaged in its governmental functions, the court said, "the doctrine is available against a governmental actor 'with respect to its discretionary actions' in making employment-related decisions where no statute or ordinance bars the promised action."

The City argues that nothing in the record demonstrates that it made "a clear and unambiguous" promise to forever maintain "a particular regulatory structure for health insurance – a Medicare supplemental plan plus fee-for-service Medicare --" for retirees. Since it began providing free coverage to retirees 60 year ago, "nearly everything about the City's offerings has undergone constant change, from the types of plans offered, to the benefits provided, to cost-sharing levels reflected in deductible and co-pays...," it says. "By granting plaintiffs through promissory estoppel what they could not achieve by contract, the First Department cast aside not just the evidence here that the City never made such a promise, but also this Court's settled jurisprudence supporting contractual relations and collective bargaining."

For appellants City et al: Assistant Corporation Counsel Richard Dearing (212) 356-2275
For respondents Bentkowski et al (Retirees): Jacob Gardener, Manhattan (212) 335-2030

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To be argued Thursday, May 15, 2025

No. 58 People v Christopher Salas

Christopher Salas was charged with the fatal stabbing of Rafael Perdomo during an argument in the Bronx in August 2007. The only evidence against Salas was testimony of three eyewitnesses and only one of them, Gregorio Urena, had ever met Salas prior to the incident. Urena had been detained by police immediately after the stabbing and identified Salas from a single photograph. Early in pretrial proceedings, Supreme Court ordered a Wade/Rodriguez hearing to consider suppression of Urena's testimony, but the hearing was never held. After the prosecutor said Urena would not be called to testify, defense counsel pursued a misidentification defense in opening statements, saying there had been no lineups held, "no photographs shown to any witnesses," and no witnesses testifying except friends of Perdomo. Soon after, the prosecutor changed course and said Urena would be called to the stand. The court allowed the prosecutor to ask Urena if he had identified Salas to the police, but not to ask about photographs. Urena also identified Salas from the stand and the prosecutor called the other eyewitnesses, both friends of Perdomo, who identified Salas as well. Salas was convicted of second-degree murder and sentenced to 22 years to life in 2011.

In 2020, Salas filed a CPL 440.10 motion to vacate his conviction due to ineffective assistance of counsel and alleged mishandling of a jury note in violation of People v O'Rama (78 NY2d 270). The delay between conviction and appeal was due largely to the court's inability to provide full trial transcripts to Salas' appellate counsel. Most of the transcripts were provided by 2019, but the court said a portion had been lost, and the transcript has no record of the second of three jury notes (note #2) being read to counsel by the court. Alternatively, the motion sought a reconstruction hearing regarding the handling of note #2.

Supreme Court denied the motion, finding counsel had been effective. It said, "given the People's representations" that they would not call Urena as a witness, "a Wade/Rodriguez hearing would have been moot.... Trial counsel's failure to conduct a Wade/Rodriguez hearing and his error during opening statements were not the sole catalysts contributing to the defendant's conviction. Trial counsel was competent on the law, had a grasp on the facts of his case, made proper objections, legal arguments, and presented a cohesive opening statement and summation." It said Salas had not made sufficiently diligent efforts to permit reconstruction of the proceedings for note #2.The Appellate Division, First Department affirmed the conviction and motion ruling, but reduced Salas' sentence to 19 years to life.

Salas says his defense counsel made numerous prejudicial errors at trial, including his failure to object when the prosecution called Urena as a witness despite "its unequivocal representation before trial that Mt. Urena would not testify." Counsel "unknowingly waived a Wade/Rodriguez hearing" for the key prosecution witness, surrendering "colorable grounds to suppress Mr. Urena's in-court identification as tainted by an earlier single-photograph identification procedure," he says, and in his opening statement "opened the door to testimony about the otherwise-inadmissible photograph identification procedure that police had previously conducted with Mr. Urena." Salas also contends he is entitled to a new trial because "there is no record evidence" that his counsel was informed of the content of note #2, which sought a partial readback of Urena's testimony, nor that the court responded to the jury. "The court's failure to provide Note 2's content to counsel is a quintessential mode of proceedings error" requiring reversal, he says.

For appellant Salas: Benjamin S. Brindis, Manhattan (212) 530-5000
For respondent: Bronx Assistant District Attorney Gamaliel Marrero (718) 838-7567

State of New York
Court of Appeals

To be argued Thursday, May 15, 2025

No. 59 Matter of Hudson Valley Property Owners Association Inc. v City of Kingston

After the State Legislature passed the Housing Stability and Tenant Protection Act (HSTPA) in 2019, permitting localities outside New York City to adopt the rent-stabilization system in the Emergency Tenant Protection Act (ETPA) that has governed apartment rentals in the city since 1974, the City of Kingston was the first municipality to opt into the ETPA. Kingston commissioned a study to determine if the vacancy rate in its qualifying housing – properties with six or more units built before 1974 – was below the 5 percent threshold required for invoking the ETPA. The first report in 2020 found the vacancy rate was 6.7 percent, too high to opt into rent stabilization. Two years later, after an influx of residents from New York City during the COVID-19 pandemic, a second study found the vacancy rate for those properties had fallen below the 5 percent threshold to 1.57 percent in 2022. The Kingston Common Council immediately declared a housing emergency and opted into the ETPA, and established the Kingston Rent Guidelines Board (KRGB).

The KRGB adopted guidelines in November 2022, including an annual rent adjustment guideline requiring that rent charged for leases commencing in 2022 and 23 be reduced by 15 percent from the base rate; and a fair market rent guideline allowing tenants whose rent increased by more than 16 percent between January 2019 and July 2022 to appeal for a refund.

Ten building owners and the Hudson Valley Property Owners Association filed this suit to challenge the emergency declaration and the guidelines issued by the KRGB. They contend that Kingston's vacancy survey was improperly conducted and "replete with errors," that the actual vacancy rate was over the 5 percent threshold and, therefore the City "had no legal basis for adopting Rent Stabilization." They argue the KRGB exceeded its authority under the ETPA in enacting the rent guidelines – including "an unprecedented 15% *rollback* in rent" – "without ever considering any owner expense data" or other required economic factors. Under the fair market guideline, they say, any rent 16% higher than rent charged in January 2019 is "deemed to be an illegal overcharge, exposing the owner to mandatory refunds and penalties for rents collected during a period when there was no rent regulation in Kingston."

Supreme Court upheld Kingston's declaration of housing emergency, saying the City demonstrated "a good-faith effort to obtain accurate survey results" on vacancies, but ruled the KRGB exceeded its authority in enacting the rent guidelines. "Nothing in the ETPA authorized the [KRGB] to make a blanket determination that all subject units are subject to a maximum rent increase of 16% retroactive to January 1, 2019 and an immediate 15% rent reduction."

The Appellate Division, Third Department modified by declaring the new rent guidelines valid. It said the vacancy survey "*was* conducted in good faith and delivered results that were based upon precise data. It follows that [the City could] reasonably rely upon its results to determine that the net vacancy rate for certain properties ... had fallen below the 15% threshold...." Regarding the guideline rolling back rents by 15%, it said nothing in the ETPA "explicitly requires that the [KRGB] adjust the rent upward rather than downward as petitioners claim.... Moreover..., the [KRGB] was not obligated to conduct a case-by-case assessment of rental units in setting the adjustment guideline, as the statute provides that the adjustment 'may be applicable for the entire' jurisdiction and is varied at the [KRGB's] discretion." It said the guidelines had no impermissibly retroactive effect.

For appellant Building Owners: Magda L. Cruz, Manhattan (212) 867-4466
For respondent Kingston: Barbara Graves-Poller, Kingston (845) 334-3947
For intervenors Citizen Action of New York et al: Marcie Kobak, Yonkers (914) 376-3757
For respondents DHCR and KRGB: Asst. Solicitor General Sarah L. Rosenbluth (716) 853-8407

State of New York
Court of Appeals

To be argued Thursday, May 15, 2025

No. 60 People v Zavearr Bacon

In February 2018, two men approached Paul Izzillo and his wife, Alexa Violando, outside an East Village soup kitchen in Manhattan and began beating Izzillo. When Violando called 911 for help, one of the men – later identified as Zavearr Bacon – allegedly punched her in the face, grabbed her cell phone, and fled into the nearby Second Avenue subway station. Both victims followed him into the station. Two responding officers first found Izzillo on the first level landing, bleeding from his face, then found Violando at the bottom of the stairs, screaming, crying and bleeding from her mouth and nose. She said, "He's on the tracks," and an officer saw someone running down the tunnel toward the next station. The officers brought them up to the street, an ambulance arrived, and the officers interviewed the couple while they were treated. The victims gave them the names of their assailants and detailed descriptions of the assault and the physical appearance and clothing of the perpetrators.

At trial, the prosecutor said in her opening that the victims would take the stand, then called the officers to testify to their report on the victims' statements on the day of the incident. The defense did not object to their testimony on Confrontation Clause grounds, but when the prosecution rested without testimony from the victims, the defense moved to dismiss, saying "the jury is left with the wrong impression as to the physical and mental condition of Alexa Violando at the time of the incident.... There was no ability to cross-examine or even on direct examination for the jury to understand that, according to her grand jury testimony, she had taken her usual dose of Methadone." The trial court denied the motion and the jury convicted Bacon of third-degree robbery and assault. He was sentenced to two to six years in prison.

The Appellate Division, First Department affirmed, ruling Bacon failed to preserve his claim that admission of the victims' statements to the officers violated the Confrontation Clause because his "general arguments concerning the failure of the complainants to testify were directed only to the adequacy and reliability of the People's proof and did not draw the court's attention to any error regarding the admission of the complainants' out-of-court statements." Alternatively, it said, the statements were nontestimonial and their admission did not violate Bacon's confrontation right because they "were elicited for the primary purpose of addressing the immediately dangerous situation and obtaining prompt assistance for the complainants.... The responding officers had received a report of an assault in progress minutes before, and the complainants, who were agitated and visibly injured when they made the statements, informed the officers that they had been beaten and that the perpetrators had fled."

Bacon argues that he preserved his confrontation claim at the first opportunity. "As soon as the prosecution revealed that the complainants would not appear – which did not occur until the close of the prosecution's case, and which contradicted the prosecution's earlier representations – defense counsel argued that the jury would receive an 'incomplete picture' without 'cross-examination' of the complainants.... This protest substantively alerted the trial court to the precise constitutional issue: Mr. Bacon's inability to 'confront[] ... the witnesses against him.'" He further argues that the ongoing emergency exception does not excuse the error. The victim's statements "were made to police officers compiling a written, routine Complaint Report, the express purpose of which was to memorialize the events in question for investigative purposes, not to mitigate any ongoing danger. Moreover, the statements were made to police officers *after* the complainants and officers determined that the suspects, who had no weapon, had fled; *after* the complainants had been relocated to a secure setting removed from the crime scene; and *after* the complainants had received medical treatment for their injuries."

For appellant Bacon: Samir Deger-Sen, Manhattan (212) 906-1200
For respondent: Manhattan Assistant District Attorney Julia Gorski (212) 335-9000