

## FEDERAL COURTS

### ***R.F.M. v Nielsen*, 3/15/19 – SIJS / RIGHTS PROTECTED**

In a lawsuit in District Court – SDNY, the five plaintiffs are young immigrants who were determined by NY Family Courts to have been abused, abandoned or neglected by one or both parents. They each obtained an order including findings that reunification with one or both parents was not viable and that return to the previous country of nationality, or of last habitual residence, would not be in his or her best interest. However, each plaintiff's application for SIJS was denied because of a policy change by USCIS. Under such policy, Family Courts are deemed to not be "juvenile courts" when exercising jurisdiction over immigrants aged 18 to 21. District Court declared that only Congress could make such a policy change; the new policy was inconsistent with the statute that created SIJS; and it misinterpreted New York law. Class certification was granted. The plaintiffs are represented by the Legal Aid Society, NYC, and Latham & Watkins.

## APPELLATE DIVISION

### **Plea Cases – Other Issues**

#### ***People v Dix*, 3/15/19 – SUPPRESSION WAIVED / BY PLEA BEFORE RULING**

The defendant appealed from a judgment convicting him of 1<sup>st</sup> degree manslaughter. The **Fourth Department** denied the defendant's pro se request to hold the appeal while awaiting the outcome of a 440 motion, and affirmed the judgment of conviction. When the defendant pleaded guilty before a suppression ruling and before *Rosario* disclosure was due, he forfeited issues regarding suppression and timely *Rosario* disclosure. The record did not support his claims of innocence; coercion; and insufficient time to discuss the plea with counsel.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_01931.htm](http://nycourts.gov/reporter/3dseries/2019/2019_01931.htm)

#### ***People v Joe Smith*, 3/15/19 – SUPPRESSION ISSUE / NO STANDING**

The defendant appealed from a judgment convicting him of 5<sup>th</sup> degree criminal possession of a controlled substance. The charge arose after a police officer, while on routine patrol in his marked vehicle, observed the defendant standing on a front porch, holding a small transparent bag. The officer claimed that he could see small cocaine rocks in the bag. After the officer stopped his vehicle, the defendant dropped the bag onto the porch. On appeal, the defendant urged that County Court should have suppressed the bag and his statements. The **Fourth Department** affirmed. The defendant lacked standing, since he had no legitimate expectation of privacy in the premises. In any event, he abandoned the bag, and that was not due to unlawful police conduct. The defendant failed to preserve his contention that police did not obtain an explicit *Miranda* waiver; and, in any event, an implicit waiver can suffice.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_01969.htm](http://nycourts.gov/reporter/3dseries/2019/2019_01969.htm)

***People v Nichiporuk*, 3/15/19 – PLEA WITHDRAWAL / INNOCENCE CLAIMS**

The defendant appealed from a judgment convicting her of felony DWI and 1<sup>st</sup> degree AUO of a motor vehicle. She contended that County Court should have granted her motion to withdraw her guilty plea. The **Fourth Department** affirmed. The motion asserted that the defendant had a valid defense—that she did not operate the vehicle on the night of her arrest. In an affidavit, her brother averred that he had been on his way to pick her up from the parking lot where she was arrested. However, the defendant was found alone, intoxicated, in the driver’s seat of a running vehicle, with her seat belt fastened. That scenario suggested that she had just operated the vehicle. Her unsworn statements denying operation were insufficient to contradict admissions in the plea colloquy. The defendant further contended that her plea was not valid because she suffered traumatic brain injury 10 months earlier. The appellate court found no indication that the defendant was uninformed, confused or incompetent at the time of plea entry.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_01988.htm](http://nycourts.gov/reporter/3dseries/2019/2019_01988.htm)

***People v Truitt*, 3/15/19 – PLEA WITHDRAWAL / INNOCENCE CLAIMS**

The defendant appealed from a judgment convicting her of 1<sup>st</sup> degree manslaughter. Her contention that the trial court erred in refusing to suppress her statement did not survive her valid waiver of appeal. She also contended that the court erred in denying her pro se motion to withdraw her plea. That contention survived the valid waiver, but lacked merit, the **Fourth Department** held. The lower court properly reviewed the plea colloquy; and the assertions of innocence were conclusory and belied by the plea colloquy.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_01983.htm](http://nycourts.gov/reporter/3dseries/2019/2019_01983.htm)

## **Family – Immigration Issues**

***Matter of Vasquez v Mejia*, 3/13/19 – SIJS / REVERSAL**

The mother filed a petition for custody of her son. After Nassau County Family Court granted the petition, the mother then moved for an order that would enable the child to petition for SIJS. The motion was denied on the ground that the child was 18. The mother appealed, and the **Second Department** found error. Since the custody petition was granted prior to the child’s 18<sup>th</sup> birthday, the trial court should not have denied the motion based on the lack of jurisdiction. Because the record did not reveal whether reunification of the child with the father was viable and returning to Honduras would be in the child’s best interests, remittal was ordered. Bruno Bembi represented the appellant.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_01780.htm](http://nycourts.gov/reporter/3dseries/2019/2019_01780.htm)

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