

No.

IN THE
Supreme Court of the United States



CAROL S. CYMBLER,
Petitioner

v.

NASSAU COUNTY, et al.
Respondents

**On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Second Circuit**

Petition for a Writ of Certiorari

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QUESTIONS PRESENTED

1. Counties are legal and political creations of a state. Despite such origins, are counties and their local governments superior to their creators such that state law does not apply to them, thereby allowing them to enter into contracts expressly unauthorized by state law?
2. There is a long history of state and federal case law establishing that contracts for performance of criminal acts are void and illegal. Is that legal canon still law of the land, overturned in its entirety so that contracts for performance of crimes are now legal and can be entered into without fear of punishment for committing such acts, or does there exist a singular exemption to that canon which allows governments to enter into written contracts whereby it hires individuals or entities to regularly perform acts statutorily defined as criminal acts?
3. Ingrained within the federal Constitution and the constitution of every state is the guarantee of due process. Impartial tribunals, verdicts only after trial and not before trial, admissibility of only legally obtained evidence, evidence authentication requirements, and the right to confront one's accuser so as to be able to put up a defense have all been declared to be guaranteed due process rights. Are these long-standing pillars of due process now relegated to the trash heap of history and no longer required in American jurisprudence?

4. Is the Takings Clause violated when a county government keeps fees imposed by county statutes or ordinances when such fees have been declared unconstitutional by the state's appellate court?
5. Can local governments or local government entities acting in illegal, unauthorized ways use their status as a government or government entity to bypass federal law in order to illegally and unjustifiably obtain federally protected information?
6. Does an illegal, unauthorized written contract for performance of illegal and unauthorized acts – inclusive of terms requiring multiple uses of the postal service and electronic communication – so as to defraud individuals and entities of monies constitute an enterprise, predicate acts, and a meeting of the minds establishing RICO violations?

PARTIES TO THE PROCEEDINGS

Petitioner Carol S. Cymbler was the plaintiff in the District Court and the appellant in the Second Circuit.

Respondents Nassau County, Nassau County Traffic and Parking Violations Agency, Verra Mobility Corporation, and American Traffic Solutions, Inc. were defendants in the District Court and appellees in the Second Circuit.

RELATED PROCEEDINGS

- *Cymbler v. Nassau County, et. al.*, No. 25-2495, U.S. Court of Appeals for the Second Circuit. Judgment entered and caption amended July 15, 2026.
- *Cymbler v. New York State, et. al.*, No. 24-cv-2792, U.S. District Court for the Eastern District of New York. Judgment entered September 9, 2025.

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Carol S. Cymbler respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit.

OPINIONS BELOW

The orders of the Court of Appeals (App. 1a-7a) and the District Court (App. 8a-43a) are unreported.

JURISDICTION

The judgment of the Court of Appeals was entered on July 15, 2026. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Relevant portions of the Federal and New York State Constitutions, federal, state, and local statutes, and local ordinances are reproduced in the appendix. (App. 44a-70a.)

STATEMENT OF THE CASE

Petitioner was issued a Notice of Liability ("Notice") for an alleged red light violation at an intersection at which an automated traffic enforcement device ("red light camera") was operating. The Notice was issued by the Nassau County Traffic and Parking Violations Agency ("NCTPVA"). Per her rights, petitioner challenged the Notice and requested a hearing. At the hearing, petitioner was denied due process. The hearing

upheld her liability and the imposed monetary penalties. Petitioner paid the monies demanded. Thereafter, petitioner filed litigation against Nassau County (“Nassau”), NCTPVA, Verra Mobility Corporation (“VM”) and American Traffic Solutions, Inc. (“ATS”). The litigation challenged the constitutionality of county statutes and ordinances and sought damages for Nassau and NCTPVA’s violations of petitioner’s federal and state constitutional rights and for federal and state torts committed by Nassau, NCTPVA, VM, and ATS.¹ The action was filed as a class action as the respondents have injured hundreds of thousands of individuals and entities in the same manner.

Per jurisdiction established by Article III of the Constitution, 18 U.S.C. §§ 1964, 2724, and 1337, 42 U.S.C. §§ 1983 and 1988, and 28 U.S.C. § 1332(d)(2)(a), petitioner brought this action in the District Court for the Eastern District of New York.

The District Court incorrectly ruled on some claims and ignored others. As one example of ignored claims, all statute constitutionality challenges were simply dismissed, inclusively, as part of the complete grants of summary judgment without mention, discussion, or explanation. To render its ruling, the court ignored federal and New York State (“NYS”) Constitutional rights and guarantees, rulings from this Court, NYS statutes, and NYS court rulings

¹ Petitioner did not challenge red light camera use constitutionality. Rather she sought damages for torts and constitutional violations stemming from the manner in which they were operated.

interpreting NYS statutes. The court even predicated part of its ruling on a state court decision despite that decision having been reversed on appeal nine months earlier.

In its affirmation, the Second Circuit also ignored these claims while affirming other claims with only a single sentence of discussion. The Circuit Court even quoted the district court's wrongful decision – a quote and ruling which only exist because petitioner's arguments and evidence as well as statutes and binding case law were ignored. In a footnote, the Circuit Court even declared it was not ruling on two appealed issues.

REASONS FOR GRANTING THE WRIT

When a government ceases to work for the benefit of the governed and instead focuses on enriching itself, it is no longer a government of, by, or for the people. When a government knowingly and willingly becomes a lawbreaker by contracting for commission of criminal acts, it has itself become criminal. When, a government's official policies and procedures strip due process from court proceedings, it is no longer a just government. When a government takes money that it is legally not permitted to take, it again becomes a criminal. A government behaving in such ways damages everyone.

When companies blatantly ignore the law for profit, the "playing field" is not even. When companies knowingly commit criminal acts for profit,

they demonstrate that enriching themselves is all that matters.

When a government and private companies conspire to break the law, contract for commission of crimes, and do so for money without care or concern for those they harm, they become the embodiment of the type of evil found in fiction.

The lower court rulings constitute approval of such governmental and private sector entity behavior.

Additionally, by dismissing the action, the lower courts have altered what constitutes due process. This alteration not only affects NYS courts but stands as a court approved model for what can now constitute due process in every jurisdiction across the country.

The decisions below also alter criminal law throughout the country. By means of the lower court decisions, criminal activity is now legal solely because a written contract for its performance exists.

Although the respondents have continuously attempted to rephrase this case as an individual unhappy about a traffic ticket, that is not what this case concerns. Petitioner filed this as a class action for the issues do not concern an isolated incident. Nassau's red light camera program began in 2009. Until petitioner, no one had uncovered the respondents' illegalities. Petitioner was the first to litigate these claims, to stand up for the millions of

victims. To put the number of victims in perspective, more than 500,000 red light camera Notices were issued in Nassau in calendar year 2016 alone. That is a substantially significant number of victims.

I. ACTIONS TAKEN FLOW FROM AN UNAUTHORIZED, ILLEGAL CONTRACT WHOSE TERMS CALL FOR, AND REQUIRE, THE REGULAR, REPEATED COMMISSION OF CRIMINAL ACTS

A. The contract for operation of red light cameras in Nassau is unauthorized as it violates both state and county law

NYS authorized Nassau's use of red light cameras. Vehicle and Traffic Law ("VTL") § 1111-b(a)(1). As part of the authorization, NYS specifically stated that "the county" was "to install and operate" the cameras. *Id.* By specifically limiting installation and operation of the cameras to the county, NYS explicitly excluded third-party private contractors from installation and operation.

After state authorization was granted, Nassau enacted county laws creating its new red light camera program. Per Title 72 § 1(a) of the Miscellaneous Laws of Nassau County, only the county's Department of Public Works was authorized to install and operate the cameras. The Nassau County Legislature thereby specifically excluded third-party private contractors from camera installation and operation.

Despite state and county statutes only permitting camera installation and operation by the county, Nassau contracted private, third-party, for-profit corporations VM and ATS for their installation and operation.

The NYS Legislature explicitly authorized only Nassau to operate the cameras. VTL § 1111-b(a)(1). Had it intended to authorize Nassau to contract out this responsibility to private, third-party for-profit corporations, it would have indicated as such.

That the NYS Legislature did not authorize, impliedly authorize, or intend to authorize, any other entity to operate the cameras is evidenced by the language used in different parts of the statute. Whereas authority to install and operate the cameras is strictly granted to Nassau (VTL § 1111-b(a)(1)), authorization for preparing and mailing Notices is granted to Nassau or any entity which Nassau authorizes to do so. VTL § 1111-b(g)(4).

The Nassau County Legislature was also specific in its statutory wording. Only Nassau's Department of Public Works was authorized to operate the cameras. Miscellaneous Laws of Nassau County, Title 72 § 1(a). Had the County Legislature intended to authorize Nassau to contract out this responsibility to private, third-party for-profit corporations, it would have indicated as such.

That the County Legislature did not authorize, impliedly authorize, or intend to authorize, any entity other than the Public Works Department to

operate the cameras is evidenced by the language used in different parts of the statute. Whereas authority to install and operate the cameras is strictly granted to that Department, (*Id.*), authorization for preparing and mailing Notices is granted to NCTPVA or its designee. *Id.* at § 5(d).

This Court has a long history of repeatedly declaring that when the language of a statute is plain and unambiguous, legislative intent is what was plainly expressed in the statute. See, e.g. *Dodd v. United States*, 545 U.S. 353 (2005); *Thornley v. United States*, 113 U.S. 310, 313 (1885) (“Where the meaning of a statute is plain it is the duty of the courts to enforce it according to its obvious terms.”)

The NYS Legislature’s wording was clear. Only Nassau was allowed to operate the cameras. Where the Legislature intended to allow other entities to act, it explicitly stated that such authorization was given. The Nassau County Legislature’s wording was also clear. Only the Department of Public Works was allowed to operate the cameras. Where the County Legislature authorized NCTPVA or a designee to act, the County Legislature explicitly stated that a designee was authorized.

“Where a law is expressed in plain and unambiguous terms, whether those terms are general or limited, the legislature should be intended to mean what they have plainly expressed, and consequently no room is left for construction.” *Lake County v. Rollins*, 130 U.S. 662, 670-671 (1889). Here both the state and county legislatures were explicitly

clear. Only Nassau, specifically its Department of Public Works, was authorized to operate the cameras. There was no express or implied authority for any other entity – including the private third-party, for-profit corporate respondents – to operate the cameras. Had such authorization been intended, the two legislatures would have so stated, just as they did with other paragraphs of the statutes regarding preparation and mailing of Notices.

The wording of the two statutes did not provide any authorization for Nassau to enter into contract² with VM and ATS whereby VM and ATS would install and operate the cameras. As there was no authorization to enter such contracts, the contract is unauthorized and illegal.³ As such, the cameras are operated in a manner not authorized by state law or county law and any actions taken as a result of, or flowing from, their operation, is invalid and illegal.

Neither lower court ever addressed the lack of authorization for such contract. They ignored the contract's illegality and all illegalities, torts, and constitutional violations that flowed from it and from the illegal, unauthorized manner in which the cameras were operated.

A government entering into a contract prohibited by both state and county statute is contrary to public

² Over the years the initial contract has been amended, extended, and/or supplemented.

³ Municipal Home Rule Law ("MHRL") does not govern as the contract is not for carrying out any NYS Constitution Article IX function or for adopting or amending any law. MHRL § 50(1).

policy. The government and the parties with whom it contracted all becoming financially enriched by using such contract to financially injure hundreds of thousands, if not millions, of individuals and entities is also against public policy.

B. The lower courts disregarded that the contract terms required VM and ATS to regularly and repeatedly commit criminal acts

Even assuming the contract is legal despite being prohibited by both state and county law, it is still illegal because it contracts for the regular, repeated commission of criminal acts.

The contract hired VM and ATS to operate the cameras. Their operation had them taking photographs and video recordings of vehicles allegedly running red lights at locations where such cameras were installed.

The photos and videos serve as the basis of issuing Notices and as evidence at hearings. Nassau, NCTPVA, VM, and ATS all knew the photos and videos taken by the cameras were to be used at hearings.

VTL § 1111-b(d) specifically states that the photos and video “evidencing” the red light violation “shall be available for inspection in any proceeding to adjudicate the liability for such violation.” The same terminology – that the photos and video “evidencing” the red light violation “shall be available for

inspection in any proceeding to adjudicate the liability for such violation” – is contained in Miscellaneous Laws of Nassau County, Title 72 § 3(b). Thus both state and county statutes declare the photos and videos are evidence and will be used as evidence at hearings adjudicating liability.⁴

As the photos and videos taken by the cameras are statutorily described as being evidence at these court hearings, contracting VM and ATS to operate the cameras so as to take those photos and videos constitutes contracting VM and ATS to secure evidence.

NYS General Business Law (“GBL”) § 71(1) defines private investigator as meaning or including “the making for hire, reward or for any consideration whatsoever...the securing of evidence to be used before any authorized investigating committee, board

⁴ Hearings adjudicating liability in Nassau are held before NCTPVA. Despite the word “agency” in its name, NCTPVA is actually a division of the Nassau County District Court. The NYS Legislature declared NCTPVA’s purpose is “to assist the court in the disposition” of traffic infractions. General Municipal Law (“GML”) § 370(1). This is also statutorily embodied in Miscellaneous Laws of Nassau County Title 72, § 3(d). NCTPVA’s status is further enshrined in a ruling by NYS’s highest court. Referring to NCTPVA, the NYS Court of Appeals stated “TPVA was established simply as a branch of the Nassau County District Court.” *Dolce v. Nassau County*, 7 N.Y.3d 492, 495 (2006). Going further, the court declared NCTPVA’s status as part of the Court was legislative intent. “Both the statutory language and the legislative history support the conclusion that the TPVA was intended to be an arm of the District Court.” *Id.* Thus NCTPVA hearings are not administrative hearings but court trials.

of award, board of arbitration, or in the trial of civil or criminal cases.” By being contracted expressly for the securing of evidence, Nassau contracted with VM and ATS for those corporations to act as private investigators.

NYS private investigator licenses issue from its Department of State. GBL § 70(1). “No person, firm, company, partnership, limited liability company or corporation shall engage in the business of private investigator... without having first obtained from the department of state a license so to do.” GBL § 70(2).

Neither VM nor ATS has, or ever had, a NYS issued private investigator license. In their lower court pleadings, VM, ATS, Nassau, and NCTPVA all argue that a license is not needed.

VM and ATS are both headquartered in Arizona. In her pleadings to both lower courts, petitioner argued how private investigators are defined identically under Arizona and NYS statutes. Petitioner also argued to both lower courts that Arizona Attorney General Opinion No. I16-002, dated March 16, 2016 (“Arizona Opinion”) declared that under Arizona law, third-party operators of red light cameras are required to have private investigator licenses. Petitioner further argued to both lower courts that after the Opinion issued, VM and ATS shut all camera operations in Arizona until they obtained a license.

In their lower court pleadings, the respondents all ignored the Arizona Opinion. Instead they relied on

Bell v. American Traffic Solutions, Inc., 371 F. App'x 488 (5th Cir. 2010), a Texas case involving a law that significantly differs from NYS (and Arizona) law and predates the Arizona Opinion by six years.⁵

Throughout her motion opposition pleadings, petitioner had provided detailed arguments, citing statutes and the Arizona Opinion. Yet the court ignored these arguments. Instead, referencing only two paragraphs of the complaint, it claimed that petitioner only made conclusory arguments citing “New York State law.” (App. 39a.) By granting summary judgment, the court never actually ruled on the issue. Instead it “side-stepped” the issue thereby allowing VM and ATS to escape liability for their actions and to continue acting as unlicensed private investigators, thereby injuring thousands more individuals and entities since then.

The requirement of having a license in order to work as a private investigator is not unique to NYS. Nor is the reasoning for the requirement – public interest – unique to NYS. Similar statutes exist in other states and courts have upheld the requirement and cited the public policy for it. See, e.g. *Taylor v. Bureau of Private Investigators*, 128 Cal. App.2d 219 (1954); *Pinkerton v. Buech*, 173 Wis. 433 (1920); *Schulman v. Kelly*, 54 N.J. 364 (1969) (declaring strict regulation of private investigators to be well within public interest). The Arizona Opinion declares the license requirement is about protecting the public and is not “absurd.” (App. 78a-79a.)

⁵ VM and ATS did not argue to Arizona that *Bell* ruled. Instead they obtained, and still have, Arizona law’s required license.

If a state statute's purpose is to protect the public interest, then as a political subdivision of the state, among Nassau's responsibilities is protecting the public interest of its citizens, entities, and visitors by enforcing the statute. Ignoring a statute designed to protect the public interest and entering into a contract with unlicensed entities is the antithesis of protecting the public interest.

The issue though, goes even deeper. Operating without a license constitutes a class A misdemeanor. GBL § 70(4).

In the premier NYS case regarding private investigators and licensing, *Shorten v. Milbank*, 170 Misc. 905 (Sup. Ct. N.Y. Co. 1939), affirmed 256 A.D. 1069 (1st Dept. 1939), the courts of NYS declared that operating as an unlicensed private investigator is malum in se.

VM and ATS knew, and had reason to know, that neither had a license. Both had responsibility for knowing the laws of all states in which they were contracting to do business.⁶ Nassau knew, and had reason to know of the statute, their responsibilities, and that neither VM nor ATS had a license. Yet for revenue and profit, all intentionally chose to ignore

⁶ Once the 2016 Arizona Opinion issued, VM and ATS were on notice that such licenses could be required in other states. Yet they chose to "play with fire," continuing to do business in multiple states including New York without obtaining statutorily required licenses.

the law.⁷ They made their intentional, knowing choices and should be held accountable for the injuries they caused.

All of these points were ignored by the District Court. Despite being argued on appeal, the Circuit Court ignored them, not discussing the issue in its decision.

By ignoring the issue, the two lower courts have essentially decreed that criminal acts are no longer criminal so long as there is a contract for their commission. What a proverbial door has now been opened. Taken to extreme, the logic of the lower courts' rulings could even mean that "murder-for-hire" is not illegal in NYS so long as the "employer" and "hired killer" put their agreement into formal written contract form.

With the government being a party to this "court approved, *malum in se*, criminal act requiring contract," the door is wide open to a slew of other illegal contracts and contract terms. In general, people are suspicious of government officials (both elected and hired/appointed) regardless of political party affiliation. Among the most common suspicions are corruption and bribery. With the government now essentially authorized to enter into illegal, criminal act requiring contracts, what is to stop governments from entering into contracts whose terms explicitly set forth exact terms (including

⁷ They also intentionally chose to ignore contract § 9(a)'s requirement that VM and ATS "shall comply with any and all applicable Federal, State and Local Laws."

amount and recipient) of kickbacks, payoffs, etc. to be made in exchange for being awarded the contract? Under the lower courts' rulings, such contracts or terms would not be illegal or criminal. Corruption generally thought to exist "under the table," would no longer need to be hidden. Include the corruption in the contract's written terms and the illegal becomes legal. Government is supposed to protect the interests of the people but in an America where this is allowed, the people's interests are irrelevant.

II. THE CONSTITUTION GUARANTEES DUE PROCESS

The lower court rulings affect all courts, state and federal by essentially declaring that due process is no longer required.

But due process is not some small concept. It is a core pillar of law in the federal Constitution and in the constitution of every state.⁸

A. Impartial tribunals are an integral part of due process

"A fair trial in a fair tribunal is a basic requirement of due process." *In re Murchison*, 349 U.S. 133, 136 (1955). At her NCTPVA hearing,

⁸ The state constitutions use different terms – "due process," "law of the land," or both – but all are meant to mean due process. Thomas M. Cooley, *A Treatise on the Constitutional Limitations Which Rest Upon the Legislative Power of the States of the American Union* 351-352 (2d edition 1871).

petitioner did not receive a fair trial nor was the tribunal fair.

As argued *supra*, NYS established the parameters of NCTPVA. It is a division of the state's District Court, charged with disposition of traffic infractions. Disposition does not include issuing the infractions.

Despite the established parameters and the basic concept of what a court does, NCTPVA issues the Notices. By issuing them, it determined that a traffic infraction occurred and held the violator liable. Only after a Notice recipient challenges liability do they get a hearing, a trial. But the hearing is held by NCTPVA – the very entity which already determined existence of liability. The hearings constitute the disposition it is authorized to do. However, it is disposing of Notices for infractions it had already determined existed by having issued the very Notices it was now disposing. Having a trial after the court already determined liability is not due process as it is not a fair or impartial tribunal.

Daniel Webster is credited with what is deemed the most quoted definition of due process. Per his definition, it is “a law which hears before it condemns; which proceeds upon inquiry, and renders judgment only after trial.” Cooley, Constitutional Limitations, 353.

Having liability determined and only afterwards having the trial is how the Cardassian judicial system in “Star Trek” operates. Explaining their system, Gul Dukat stated, “On Cardassia, the verdict

is always known before the trial begins.” (Star Trek Deep Space Nine: The Maquis, Part II, broadcast May 1, 1994). Prior to Miles O’Brien’s trial, presiding Chief Archon Makbar stated that “his verdict has already been determined. He is guilty. The trial will reveal how this guilt was proven.” (Star Trek Deep Space Nine: Tribunal, broadcast June 5, 1994).

Both lower courts contended that due process is satisfied by the “sham” trials which NCTPVA gives. The Circuit Court even declared that due process was not violated because petitioner could appeal the hearing decision. (App. 4a). Due process requires a “neutral and detached judge” *Ward v. Village of Monroeville*, 409 U.S. 57, 61-62 (1972). Despite the Circuit Court’s contention, the due process violation of not having an impartial judge cannot be corrected via an appeal and trial de novo. *Id.* at 61.

B. Illegally obtained evidence cannot be admitted and used

As a division of the District Court, all NCTPVA hearings must comply with state evidentiary rules. VTL § 1690(2) further reinforces this by declaring evidentiary rules “shall” apply at NCTPVA hearings presided over by judicial hearing officers.

As argued *supra*, Nassau had no authority to enter into contract with VM and ATS for camera operation. With the contract being illegal, photos and videos taken by the cameras are illegal and can’t be used as evidence.

As also argued *supra*, the photos and videos are taken for use as evidence at trial but neither VM nor ATS have the required NYS private investigator license. Since VM and ATS, by their own lower court admissions knowingly acted as unlicensed private investigators, they were regularly and routinely committing class A misdemeanors, only taking the photos and videos because they were hired to repeatedly commit this crime. The photos and video are, at the very least, fruit of a poisonous tree.

Admittedly, NYS follows the common law rule of admissibility but exceptions exist. Existence of an overriding policy basis is one such exception. See, e.g. *Heimanson v. Farkas*, 292 A.D.2d 421 (2d Dept. 2002); *Tabbi v. Town of Tonawanda*, 111 Misc.2d 641 (Sup. Ct., Erie 1981).

In the instant matter, the only reason the evidence even exists (as do the charges brought) is because (1) a government entity entered into an unauthorized contract, (2) with corporations lacking the requisite state license, thereby (3) contracting for commission of criminal acts.⁹ Each is significantly contrary to public policy thus three overriding policy basis exceptions exist to bar admissibility of the photos and videos.

C. Evidence must be authenticated

As a division of the District Court and specifically

⁹ The photos and videos could not be inevitably discovered as they would not exist if not for the illegal, unauthorized contract.

per VTL § 1690(2), evidentiary rules apply at NCTPVA hearings. But per policy, the videos and photographs are admitted without authentication.

At her NCTPVA hearing, petitioner objected to admission of the photos and videos without authentication. The presiding judicial hearing officer's reasoning for overruling the objection was that they are evidence because they were taken by a machine.

Every camera – film or digital, still or video – is a machine. It is the means by which a photo or video is taken. Under the hearing officer's logic, any photo or video is automatically admissible because it was taken by a machine. But that is not NYS law.

Photos must be authenticated in order to be deemed admissible in NYS court proceedings. Guide to New York Evidence, Rule 9.13. The same is true for videos. *Id.*, Rule 9.14. This has also been clearly established by NYS's highest court.

For evidence to have probative value, "there must be proof that it is what its proponent says it is." *People v. Price*, 29 N.Y.3d 472, 476 (2017). Authentication is "a condition precedent to admitting evidence." *Id.*

As regarding photographs, "the ultimate object of the authentication requirement is to insure the accuracy of the photograph sought to be admitted into evidence." *People v. Byrnes*, 33 N.Y.2d 343, 347 (1974). Authentication and foundation are also

necessary for admission of videos. *People v. Patterson*, 93 N.Y.2d 80, 84 (1999). The authentication methodology is the same for both. *Id.*¹⁰ The authentication requirement was reaffirmed earlier this year in *Matter of MS*, 2026 NY Slip Op. 825 (Ct. of Appeals, Feb. 17, 2026) yet both lower courts ignored the issue.

D. The right to confrontation

A core of due process is the right to confront one's accuser. While the Constitution's confrontation clause only applies to criminal matters,¹¹ the confrontation clause in Article I, § 6 of the NYS Constitution applies to criminal and civil matters. Per the Fourteenth Amendment due process is imposed upon the states.

GML § 371(3) states that NCTPVA is prohibited from preventing a person "from exercising his right to appear in court to answer to, explain, or defend any charge of a violation of any traffic law, ordinance, rule or regulation." Part of a defense is the ability to confront and cross-examine witnesses.

Per official policy, no witnesses appear at NCTPVA hearings. Instead a notarized certificate is presented – sworn to the day of the hearing by an

¹⁰ Admissibility and the authentication requirement applies in civil matters. *Zegarelli v. Hughes*, 3 N.Y.3d 64 (2004).

¹¹ It can be argued that Nassau and NCTPVA's repeated use of the term "not guilty" implies that they treat Notices and hearings as quasi-criminal thereby triggering the federal Constitution's confrontation clause guarantee.

individual employed in the very building in which the hearing is held. A document cannot be cross-examined thus per policy the state right of confrontation is denied.

Being denied the right to confront and cross-examine witnesses prevents a full defense from being proffered thereby petitioner was denied her right to be heard.

The opportunity to be heard is not only “[a] fundamental requirement of due process” but it must be granted “in a meaningful manner.” *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965). The due process right to a hearing would be “barren” if the right to put forth a defense is not provided. *Morgan v. United States*, 304 U.S. 1, 18 (1938).

Notice hearings held by NCTPVA are barren and not meaningful. They deny the right to be heard by intentionally denying the right to confront and cross-examine witnesses thereby preventing a full defense from being proffered. This is not arbitrary but by policy and design.

These due process issues were argued to both lower courts. More important is that petitioner is not alone in being victimized in this same way. These same actions – taken per Nassau and NCTPVA policies and procedures – have been repeated thousands of times at NCTPVA hearings and continue to happen. Petitioner stood up for her rights and the rights of all the other victims by bringing suit for the due process violations. Yet many of those

due process claims were simply dismissed without discussion by the District Court and affirmed by the Circuit Court. The Circuit Court even added insult to injury by declaring that due process existed simply because the hearing decision could be appealed. (App. 4a.) Approving a scheme that has already deprived thousands of individuals and entities of their due process rights and allowing that scheme and deprivation to continue makes a mockery of America's judicial system.

III. UNCONSTITUTIONAL FEES IMPOSED BY THE GOVERNMENT ARE ILLEGAL TAKINGS IN VIOLATION OF THE TAKINGS CLAUSE

When found liable for the red light camera violation, petitioner was required to pay \$150 consisting of a fine (set at the \$50 maximum allowed by state law) plus Nassau's imposed Drivers Responsibility Fee ("DRF") and Public Safety Fee ("PSF"). Petitioner contended that these additional fees were illegal violations of the Fifth Amendment's Takings Clause.

The District Court dismissed both claims yet only discussed the DRF claim, never mentioning the PSF.

A. The DRF

The District Court declared the DRF is only a fee

for violating a red light. (App. 38a.)¹² But that is not true.

In her pleadings, petitioner argued that the DRF is an administrative fee charged in addition to the fine. In support of their motion, Nassau and NCTPVA submitted copies of local county ordinances which imposed (and subsequently increased) the DRF. The ordinances describe the DRF as “an administrative fee” and a “court cost fee” (Nassau Ordinance 186-2010 § 1) and a fee for adjudicating cases before NCTPVA (preamble to Nassau Ordinance 190-2012). Thus it is not a fee for a red light camera violation as the court contended.

More importantly, the District Court ignored *Guthart v. Nassau County*, 232 A.D.3d 854 (2d Dept. 2024) – a decision issued nine months before it rendered its decision.

In *Guthart*, a unanimous NYS Appellate Division struck down the DRF. The Appellate Court declared “imposition of a monetary liability for a red light camera violation in excess of \$50, or \$75 with a late fee, is ultra vires, unconstitutional, preempted, void as a matter of law or otherwise illegal.” *Id.* at 857.¹³

¹² The District Court went even further. Relying on *McCarthy v. City of Cleveland*, 626 F.3d 280 (6th Cir. 2010) it declared that the DRF was not an improper taking because the funds were not seized from petitioner’s bank account. (App. 37a-38a.)

¹³ Nassau chose not to appeal, accepted the ruling, and ceased imposing it.

With *Guthart* having declared the DRF unconstitutional, void, ultra vires, preempted, and illegal, keeping monies taken through imposition of that fee is an unconstitutional taking of petitioner's property and a violation of the Takings Clause.

Petitioner brought *Guthart* and the nature of the DRF to the Circuit Court's attention. Yet the Circuit Court ignored all her arguments. Despite the ordinances imposing the DRF declaring it to be administrative, the Circuit Court quoted the District Court's incorrect ruling that the DRF was a fine for a red light violation and therefore not a Takings Clause violation. (App. 5a).

State court interpretation of a local statute is the ultimate interpretation. With the DRF imposed by county ordinance, interpretation of its constitutionality rests with the state courts. Here the fee, thus the underlying statute imposing it, was declared unconstitutional by the state courts and such interpretation is to be recognized by the federal courts.¹⁴

B. The PSF

All of petitioner's claims were dismissed.¹⁵ The Circuit Court affirmed, declaring fees for violating a

¹⁴ By essentially reviving the DRF's validity, the lower courts overrode state court interpretation of local law.

¹⁵ Despite separate Takings Clause claims being brought for the DRF and PSF, the District Court claims there was only one, for the DRF. (App 37a-38a.)

red light are not Takings Clause violations. (App. 5a.)

Although *Guthart* never raised claims for the PSF, the logic of that ruling must equally apply to the PSF. *Guthart* ruled that fees in excess of the \$50 state maximum fine are unconstitutional, void, ultra vires, and preempted by state law. With Nassau having set the fine at \$50 (Miscellaneous Laws of Nassau County, Title 72 § 4(a)), imposition of the PSF in addition is unconstitutional, void, ultra vires, preempted by state law, and illegal. Taking and keeping that money via its imposition is an unconstitutional taking of property in violation of the Takings Clause.

Equally as important is that the PSF is not a fee for a red light violation. Rather it is a selectively imposed fee for general county purposes.

Nassau County Administrative Code § 8-33.0 imposes the PSF, declaring that its purpose is “protecting the safety and well-being of the residents and visitors to the County, including but not limited to traffic safety, policing security and anti-terrorism activities and by deterring illegal and reckless driving.”

Red light camera violations have no connection with money needed by Nassau for policing or anti-terrorism. Yet per the statute, the only source of

money to provide these services comes from an administrative fee charged by NCTPVA.¹⁶

“The Fifth Amendment’s guarantee that private property shall not be taken for a public use without just compensation was designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.” *Armstrong v. United States*, 364 U.S. 40, 49 (1960).

Nassau is responsible for protecting the safety and security of all its residents and visitors. This includes general policing and anti-terrorism protection. Yet by statute, the financial burden is solely placed on a select number of people and entities as only those with traffic related issues before NCTPVA must bear the cost. The statute’s own descriptive purpose indicates the fee is selectively exacted as a forced contribution to general government revenue purposes. See, e.g. *Webb’s Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 163 (1980).

The DRF and PSF were Takings Clause violations and the lower courts were wrong to say otherwise.

¹⁶ Parking violations are a traffic safety issue. Yet despite claiming traffic safety as a purpose, the statute specifically declares the PSF will not be assessed on “infractions of parking laws, ordinances, rules, and regulations.” This even further limits the number of individuals who bear the cost of the PSF’s stated purpose.

IV. A GOVERNMENT OR GOVERNMENT ENTITY ACTING IN ILLEGAL, UNAUTHORIZED WAYS CANNOT BYPASS FEDERAL LAWS TO OBTAIN FEDERALLY PROTECTED PRIVATE INFORMATION NOR CAN EITHER USE SUCH BEHAVIOR TO ILLEGALLY AUTHORIZE PRIVATE COMPANIES TO ILLEGALLY OBTAIN THAT INFORMATION

Nassau did not have state authorization to contract with VM and ATS for the operation of the red light cameras. Per state statute, only Nassau (specifically, per county statute, its Public Works Department) was legally authorized to operate those cameras. NCTPVA did not have state authorization to issue Notices predicated on photos and videos taken by those cameras. By not having the requisite private investigator license, VM and ATS were criminally operating as unlicensed private investigators.

In order to issue and mail Notices, it was necessary to obtain personal information about the owners of vehicles which the cameras allegedly caught running red lights. That information is only available from the motor vehicle department of the state in which each such vehicle is registered.

Nassau and NCTPVA gave written authorization to VM and ATS to obtain that information so that Notices could be issued. However, that violates federal law.

Since the contract under which the cameras were operated was not authorized by state or county law, their operation by VM and ATS was illegal. Since their operation was illegal, the photos and videos taken by those cameras were illegal. Notices could not legally issue predicated on the illegal contract, illegally operated cameras, and illegal photos and videos.

Since Notices could not legally issue, Nassau did not have authorization to obtain petitioner's registration information for purposes of issuing a Notice to her. For that same reason, and for the aforementioned reason of NCTPVA not having state authorization to issue Notices, NCTPVA did not have authorization to obtain petitioner's registration information for purposes of issuing a Notice to her.

As neither Nassau nor NCTPVA had authorization to obtain that information for purposes of issuing a Notice, neither could authorize VM or ATS to obtain that information for the same Notice issuing purpose.

Per contract terms, but without authorization to do so, Nassau and NCTPVA none-the-less gave VM and ATS written authority to obtain private, personal information from state motor vehicle offices across the country for Notice issuing purposes.

The Drivers Privacy Protection Act ("DPPA"), 18 U.S.C. §§ 2721, et. seq. was enacted by Congress to ensure that this private information remained protected. The statute specifically identifies a series

of exceptions under which that information can be obtained. §§ 2721(b)(1)-(14).

Under no reading of the statute can obtaining that information for illegal, unauthorized purposes qualify as an exception to the strict prohibition on divulging that information.

By not having state authorization to issue Notices, NCTPVA was not carrying out any authorized function to justify obtaining that information under § 2721(b)(1). Nor would NCTPVA have authorization to give VM or ATS access to that information on its behalf for purposes of issuing Notices.

With Nassau's red light camera contract with VM and ATS not authorized by state or county law, the term of the contract under which Nassau agreed to have VM and ATS provided with access to this information for Notice issuing purposes is illegal. Thus Nassau did not have a § 2721(b)(1) purpose for accessing this information nor did VM or ATS.

The only possible "driver safety" basis for accessing this information per § 2721(b)(2) revolves around Notice issuance. Neither Nassau nor NCTPVA needed that privileged information for any driver safety reason other than issuance of the red light camera violation Notice. Since the Notice being issued was unauthorized and illegal, the "driver safety" relation to Notice issuance fails. As the only "driver safety" connection for VM and ATS obtaining that information was for purposes of issuing illegal,

unauthorized Notices, they also have no § 2721(b)(2) reason to obtain the information. Operating under an unauthorized contract is a second reason VM and ATS do not qualify for § 2721(b)(2) access.

NCTPVA, in its official state authorized function as a court could only adjudicate traffic infractions and not issue them. Obtaining the information was not done in order to adjudicate issued Notices but to issue them. As such it could not legally obtain that information under §§ 2721(b)(1) or (4). Neither Nassau nor NCTPVA could authorize VM or ATS to have such access on behalf of NCTPVA under its judicial function.

VM and ATS do not have, never had, and have openly admitted to not having, a NYS private investigator license. As such, they could not obtain access under § 2721(b)(8).

As none of the respondents had a reason to obtain the petitioners private, protected information under any of the DPPA exceptions, obtaining that information was a violation of the DPPA.

The District Court's reasoning for dismissing the DPPA claims was wrongful, and rewrote petitioner's claims and the arguments she made in her pleadings. Worse, the District Court untruthfully claimed that petitioner's contentions were merely conclusory and relied on general reference to NYS law. (App. 39a.) ¹⁷

¹⁷ The District Court cited to "general NYS law" references in two paragraphs of the complaint while totally ignoring the

The District Court even wrongfully claimed that petitioner never addressed the permissible purposes espoused in § 2721. (App. 40a.) Making such a statement required the court to ignore all of petitioner's arguments regarding the lack of authorization for NCTPVA to issue Notices, their lack of authorization to give such authority to VM or ATS, the illegal, unauthorized nature of the contract, and the criminal actions of VM and ATS. All of those actions and illegalities were the very underpinnings of the reasons they accessed the information. Acting in illegal, unauthorized, and criminal ways is *prima facie* demonstration of why any of the respondents accessing that information was not permissible.¹⁸

The Circuit Court wrongfully affirmed. To justify its ruling, it not only cited §§ 2721(b)(1), (2), and (4) but cited the lower court's untruthful contention which claimed petitioner never discussed § 2721(b)'s permissible purposes. (App 5a.) As indicated *supra*, the arguments put forth by petitioner expose the respondents' actions as illegal and authorized. Such illegal and unauthorized actions do not qualify as permissible purposes under the statute. By citing the

detailed statutory references and arguments in her motion opposition pleadings.

¹⁸ In footnote 12 of its decision, the District Court contended that petitioner never brought any federal claims against VM and ATS. (App. 30a.) While the cited memorandum did accidentally call the invasion of privacy claim a state claim, the entirety of the complaint's 16th cause of action quantified the claim as being for violation of the DPPA. The complaint even specifically stated that the claim sought remedies under 18 U.S.C. §§ 2724(b)(1)-(4). Claims brought for DPPA violations are strictly federal claims as they can only be brought in federal court. § 2724(a).

District Court's wrongful ruling which ignored petitioner's arguments entirely, the Circuit Court not only ruled incorrectly but demonstrated that it too ignored petitioner's arguments.

Allowing local governments and private entities contracting with them to use illegal and unauthorized actions as justification for bypassing privacy protections put in place by Congress starts the country down a slippery slope. What other protections or laws can simply be bypassed at will because a government, government entity, or government contractor acts illegally and without authorization?

V. REGULARLY USING THE POSTAL SERVICE AND ELECTRONIC COMMUNICATIONS TO TAKE ILLEGAL AND UNAUTHORIZED ACTIONS AS PART OF A WRITTEN CONTRACT AND PLAN TO ILLEGALLY BECOME ENRICHED CONSTITUTES A RICO SCHEME

The respondents' actions constitute RICO violations. Yet the District Court wrongfully declared no RICO claim was demonstrated and it was wrongfully affirmed by the Circuit Court.

The existence of the written contract which sets forth the duties and responsibilities of the respondents is proof of the existence of an enterprise. It also sets forth the details of how the fraud they perpetuate is to be carried out.

Citing *Foskey v. The Corporate State of New York*, No. 22-2546 (E.D.N.Y., Aug. 10, 2022), the District Court claimed petitioner laid out no more a claim than did the *Foskey* plaintiff. (App. 41a.)

As described by the *Foskey* Court, the therein plaintiff had provided no factual allegations, just mere conclusions, including a general claim of having been conspired against by the therein defendants.

In contrast, petitioner provided pages of in-depth facts and allegations. She detailed the contract (including references to its terms), actions taken in furtherance of that contract by the respondents, and cited statutes. Petitioner explained how Nassau knew, and had reason to know, that it was not authorized to enter into that contract. She detailed how NCTPVA was not authorized by state law to issue Notices yet did so under the contract terms. She detailed how state and county law prohibited VM or ATS entering into that contract to install or operate the cameras. Petitioner detailed how, in order to perform terms under the contract, VM and ATS were required to have a NYS private investigator license.

To do business in NYS, VM and ATS are required to be aware of laws with which they must comply. As government entities, Nassau and NCTPVA are required to be cognizant of statutes and ensure that entities they contract with comply with law including license requirements. Yet, as argued by petitioner – and proven with her statutory and contractual references – Nassau and NCTPVA not only violated

state and county law but turned a blind eye to VM and ATS not having the requisite state license. All of the respondents decided that non-compliance with statutes and contracting for the criminal act of operating without a license was worth doing because of how much money would flow to them.

The District Court went even further in its wrongful dismissal. Despite petitioner arguing and demonstrating the meeting of the minds as evidenced by an official government contract, the court, citing *Wolhender v. Goldberg*, No. 19-cv-457 (E.D.N.Y. Sept. 23, 2020), declared a contract does not constitute a meeting of the minds to commit RICO predicate acts. (App. 41a.)

In her Circuit Court pleading, petitioner pointed out *Wolhender's* inapplicability. In that case, there was no written or oral contract. The RICO claims there were predicated on a synagogue board's actions which the therein plaintiff took issue with.

In contrast, petitioner demonstrated that a meeting of the minds occurred. The respondents all knew, and had reason to know, of legal requirements and statutes. Yet all chose to violate the statutes – including contracting for commission of criminal acts – because they wanted to make money. Agreed upon written contract terms is a meeting of the minds, even when the terms are for violating state and federal statutes and hiring/being hired for commission of criminal acts.

The Circuit Court, in affirming the RICO dismissal, claimed that petitioner never identified any predicate acts listed in 18 U.S.C. § 1961(1). (App 5a.) This demonstrates that the Circuit Court never read petitioner's complaint, lower court opposition briefs, or appellate brief.

Petitioner spent pages of the complaint detailing how the respondents used the postal service and wires (electronic methods) in this scheme.

Petitioner detailed exactly how, for each person or entity that received a Notice and paid the demanded amount without requesting a hearing, the respondents utilized the postal service at least once and wires at least three times (plus one more use of either unless payment was made in person).

Petitioner detailed exactly how, for each person or entity that received a Notice, requested and received a hearing, and then had to pay the demanded amount, the respondents utilized the postal service at least three times and the wires at least four times (plus one more wire use if the fee was paid by debit or credit card).

Millions of Notices were illegally sent because the respondents all conspired to enter into an unauthorized, illegal contract, contract for VM and ATS to regularly commit class A misdemeanors, deny due process and thereby defraud millions of

individuals and entities.¹⁹ What more can demonstrate predicate acts than the same acts (including multiple uses of the mails and wires) being done millions of times since 2009 under a written plan (in the form of a formal contract) and enforced via official policies and procedures?

VI. FEDERAL COURTS ARE MANDATED TO APPLY STATE COURT INTERPRETATION OF STATE STATUTES

The District Court dismissed all claims against NCTPVA, wrongfully relying on *Davis v. Nassau County*, No. 06-CV-4762 (E.D.N.Y. Nov. 5, 2011.) to declare NCTPVA an administrative arm of Nassau and not a separate suable entity. (App. 28a-29a.)²⁰ As the Circuit Court did not rule on the issue (App. 6a, fn 1.), the issue has not been judicially reviewed.

NYS statutorily declared NCTPVA to be a division of the court. GML §§ 370(1) and (2). Nassau legislatively acknowledged NCTPVA as a branch of the District Court. Miscellaneous Laws of Nassau County Title 72, § 3(d). Courts are not county administrative arms.

¹⁹ The fraud and all illegalities were disguised by repeated use of Nassau and NCTPVA's names, addresses, and logos to imply everything was legal.

²⁰ In footnote 2 of its ruling, the District Court declared it did not consider petitioner's Exhibit E on the grounds of not having been mentioned, or incorporated by reference, in the complaint. (App. 9a-10a.) Among the reasons this was wrongful is that the exhibit is an official government document from NCTPVA's own website wherein Nassau and NCTPVA identify themselves as separate entities for legal purposes.

The state statutes were analyzed in 2006 by NYS's highest court. The NYS Court of Appeals declared that NCTPVA was legislatively established as a branch/arm of the court and that such conclusion is demonstrated by the statute's language and legislative history. *Dolce, supra* at 495.

"State courts are the final arbiters of their own state law." *Danforth v. Minnesota*, 552 U.S. 264, 291 (2008) (Roberts, C. J., dissenting). This concept was recognized long ago by this Court in *Erie Railroad Company v. Tompkins*, 304 U.S. 64 (1938). The concept is also statutory (28 U.S.C. § 1652) and has been since its inclusion by the First Congress in § 34 of the Judiciary Act of 1789.

Dolce was decided five years before the erroneous *Davis* ruling. In *Dolce*, a NYS specific law was interpreted by the state's highest court. *Davis* ignored *Erie*, federal law, and NYS's highest court's interpretation of a NYS statute. By relying on *Davis*, the lower court has also ignored *Dolce*, *Erie*, and federal law.

"State courts are the ultimate expositors of state law." *Mullaney v. Wilbur*, 421 U.S. 684, 691 (1975). Courts "cannot amend a statute by inserting words that are not there, nor will a court read into a statute a provision which the Legislature did not see fit to enact." *People v. N.H.*, 2026 NY Slip Op. 02437 (Ct. of Appeals, Apr. 23, 2026) (internal citation omitted).

NYS's highest court interpreted state law, declaring that its conclusion is drawn from the

statute's wording and legislative history.²¹ Five years later, in *Davis*, a federal court wrongfully ignored all of the statutes and cases establishing dominance of state court interpretation of state law and decided to rewrite state law and the express intent of the state legislature. *Davis* was wrong for ignoring law, precedent, and maxims and the lower court was wrong for relying on *Davis*.

Once a federal court starts overruling state court interpretation of strictly state law involving no federal issue, the federal courts are declaring state court interpretations of state law to be irrelevant. In doing so, they jettison the maxims of *Erie* and of unbroken, unchanged Congressional intent dating back to the Judiciary Act of 1789.²²

When federal courts add new terms into a state statute not expressly included therein and which were expressly not included as per the statute's legislative history, the federal court imposes itself on the state as the state's new legislature. This infringes directly on state independence and makes all state legislatures subservient to federal judicial whim.

²¹ Admittedly, GML §§ 370(2) and 370-a(1) declare NCTPVA to be a department of Nassau and the lower court cited Nassau County Administrative Code § 24-1.1 which declared the same. (App. 29a.) However, by virtue of a state's highest court having authority to interpret statutes, *Dolce's* ruling – predicated on legislative wording, history, and intent – resolves all conflicts in wording of these statutes.

²² These same maxims were jettisoned when, discussed *supra*, the lower courts overrode state court interpretation of the local statute imposing the DRF.

CONCLUSION

“Nothing can destroy a government more quickly than its failure to observe its own laws, or worse, its disregard of the charter of its own existence.” *Mapp v. Ohio*, 367 U.S. 643, 659 (1961).

Nassau has violated its own laws. As it exists by charter of NYS, by violating state law, it has violated its charter. NCTPVA exists per enactment of state and county laws which is akin to existing by charter. By its actions, NCTPVA has violated both state and county laws and intentionally acted outside of, and beyond, its state legislated authorized parameters. In doing so, it has violated its charters.

VM and ATS have knowingly chosen to violate NYS law. They chose not to obtain the required NYS license. They contend to the courts that none is needed anywhere – directly conflicting with their compliance with Arizona’s license requirement since 2016.

The actions taken by all respondents are not things that were done just once, to petitioner. Rather the respondents have taken these actions thousands of times since 2009, causing financial injury to millions of individuals and entities while filling the government respondents’ coffers and enlarging the corporate respondents’ bank accounts.

Allowing the wrongful lower court rulings to stand creates judicial approval for these types of actions. Laws, including the Constitution, would no

longer apply to governments. Due process in judicial proceedings would no longer be required. Licenses would no longer be necessary for anything. Any criminal act could now be taken legally and without fear of penal punishment so long as the act is done pursuant to a written contract.

The lower court rulings create a world and precedent that gives free reign to the permanent continuation of such activities and no limit on the number of victims that will be harmed by the respondents and by those who can now model their own actions on these court approved actions.

The petition for a writ of certiorari should therefore be granted.

Respectfully submitted,

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APPENDIX

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Appendix A

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 15th day of July, two thousand twenty-six.

Present: PIERRE N. LEVAL, MICHAEL H. PARK,
EUNICE C. LEE,
Circuit Judges,

CAROL S. CYMBLER,
Plaintiff-Appellant,

v.

25-2495

NASSAU COUNTY, NASSAU
COUNTY TRAFFIC AND PARKING
VIOLATIONS AGENCY, VERRA
MOBILITY CORP., AMERICAN
TRAFFIC SOLUTIONS, INC.,
*Defendants-Appellees.**

Appeal from an order of the United States District
Court for the Eastern District of New York
(Donnelly, J.).

FOR PLAINTIFF-APPELLANT: Benjamin J.
Fischer, Law Office of Benjamin J. Fischer, PLLC,
Bayside, NY,

FOR DEFENDANTS-APPELLEES NASSAU
COUNTY AND NASSAU COUNTY TRAFFIC AND
PARKING VIOLATIONS AGENCY: Robert F. Van
Der Waag, Deputy County Attorney, Hon. Thomas A.
Adams, Nassau County Attorney, Nassau County
Attorney's Office, Mineola, NY,

FOR DEFENDANTS-APPELLEES VERRA
MOBILITY CORP., AMERICAN TRAFFIC

* The Clerk of Court is respectfully directed to amend the
caption accordingly.

SOLUTIONS, INC.: Jason Stiehl, Neil Nandi, Crowell & Moring LLP, Chicago, IL; Eric Aronson, Crowell & Moring LLP, New York, NY,

Appeal from an order of the United States District Court for the Eastern District of New York (Donnelly, *J.*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the district court is **AFFIRMED**.

After Plaintiff-Appellant Carol Cymbler was fined \$150 for driving through a red light in Nassau County, she sued Defendants-Appellees—who manage and operate the red-light cameras that led to Cymbler’s fine—under multiple state and federal causes of action. The district court dismissed Cymbler’s claims, concluding that she did not state any federal claim for relief. The district court also decided not to exercise supplemental jurisdiction over Cymbler’s state-law claims. We assume the parties’ familiarity with the underlying facts, the procedural history of the case, and the issues on appeal, to which we refer only as necessary to explain our decision to affirm.

I. Failure To State a Federal Claim

Cymbler brought federal claims against Nassau County and the Nassau County Traffic and Parking Violations Agency (“NCTPVA”) (together, the “Nassau Defendants”) under 42 U.S.C. § 1983,

alleging violations of the Due Process Clause, the Equal Protection Clause, and the Takings Clause of the U.S. Constitution. She also brought claims against all Defendants under the Drivers Privacy Protection Act (“DPPA”), 18 U.S.C. § 2721, and the Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. § 1961. We agree with the district court that Cymbler failed to state any federal claim for relief. *See Cymbler v. New York State*, No. 24-cv-2792, 2025 WL 2605233, at *9–13 (E.D.N.Y. Sept. 9, 2025).

First, Cymbler argues that the Nassau Defendants violated her substantive and procedural due process rights by offering insufficient protections at a hearing about her red-light ticket. “For state action to be taken in violation of the requirements of substantive due process, the denial must have occurred under circumstances warranting the labels ‘arbitrary’ and ‘outrageous.’” *Natale v. Town of Ridgefield*, 170 F.3d 258, 262 (2d Cir. 1999). Cymbler has identified nothing “arbitrary” or “outrageous” about the hearing, during which she was shown the evidence against her—a video and photographs—along with a certificate from a NCTPVA technician (as required under the statute), and she was offered the right to appeal. *See Cymbler*, 2025 WL 2605233, at *3. Likewise, nothing at the hearing violated Cymbler’s procedural due process rights. The district court correctly concluded that the procedural protections at the hearing were sufficient to protect Cymbler’s interest in the \$150 she was fined.

Second, Cymbler argues that the Nassau Defendants violated the Equal Protection and

Takings Clauses when they charged her certain fees as part of the \$150 fine. As to the Equal Protection Clause, Cymbler argues that she was charged additional fines compared to others charged for different traffic violations, such as parking infractions. This argument is devoid of merit. Cymbler failed to state an Equal Protection claim because “it is rational to conclude that car drivers who run red lights pose a greater danger to public safety than bicycle riders who run red lights or than drivers who violate parking regulations.” *Id.* at *11. As to the Takings Clause, we also agree with the district court that “a fee that a driver must pay for violating the red light laws . . . is not an improper taking.” *Id.* at *12.

Third, Cymbler claims that all Defendants violated the DPPA and RICO. The DPPA prohibits the release of certain personal information from State motor vehicle records. *See* 18 U.S.C. § 2721. But it permits the disclosure of information “[f]or use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf of a Federal, State, or local agency in carrying out its functions,” *id.* § 2721(b)(1), or for “matters of motor vehicle or driver safety,” *id.* § 2721(b)(2); see also *id.* § 2721(b)(4). As before the district court, Cymbler “does not address the permissible purposes in § 2721,” so she has not stated a DPPA claim. *Cymbler*, 2025 WL 2605233, at *13. Cymbler also has not identified RICO predicate acts by Defendants that constitute a pattern of racketeering activity, so she failed to state a RICO claim. *See* 18 U.S.C. § 1961(1) (identifying RICO predicate acts).

II. State-Law Claims

We review a district court’s decision to decline to exercise supplemental jurisdiction over state-law claims for abuse of discretion. *Kolari v. New York-Presbyterian Hosp.*, 455 F.3d 118, 122 (2d Cir. 2006). “It is well settled that where, as here, the federal claims are eliminated in the early stages of litigation, courts should generally decline to exercise pendent jurisdiction over remaining state law claims.” *Klein & Co. Futures v. Bd. of Trade of City of New York*, 464 F.3d 255, 262 (2d Cir. 2006). The district court did not abuse its discretion in declining to exercise supplemental jurisdiction over Cymbler’s state-law claims.¹

¹ We do not reach Cymbler’s arguments that the district court erred in concluding that she lacked standing to seek injunctive relief and that NCTPVA is not a suable entity under New York law. Cymbler also argues that the district court erred in converting Nassau County and NCTPVA’s motion for judgment on the pleadings under Rule 12(c) to a motion to dismiss under Rule 12(b), but even if this were correct, any such error would not affect our review because “[t]he standard for granting a Rule 12(c) motion for judgment on the pleadings is identical to that for granting a Rule 12(b)(6) motion for failure to state a claim.” *Lively v. WAFRA Inv. Advisory Grp., Inc.*, 6 F.4th 293, 301 (2d Cir. 2021) (citation omitted); *see also Patel v. Contemp. Classics of Beverly Hills*, 259 F.3d 123, 127 (2d Cir. 2001) (affirming a district court’s ruling on a motion filed under Rule 12(b) in part because it “could and should have been considered as a Rule 12(c) motion for judgment on the pleadings”). Cymbler has not provided any evidence of prejudice she endured as a result of the conversion of the Rule 12(c) motion to a Rule 12(b) motion here, and a district court has discretion to convert such a motion *sua sponte* under these circumstances in order to promote efficiency in the use of judicial resources. *See Vanhorn v. Salvation Army*, No. 24-3126, 2026 WL 1257804, at *3 (10th Cir. May 7, 2026) (holding that a district court did not commit

We have considered Cymbler's remaining arguments and find them to be without merit. For the foregoing reasons, the judgment of the district court is **AFFIRMED**.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk of Court

UNITED STATES SECOND CIRCUIT
COURT OF APPEALS,

reversible error when it converted a defendant's Rule 12(c) motion into a Rule 12(b)(6) motion after a defendant had filed an answer but pleadings were not yet closed in part because "the same standard applies to a motion for judgment on the pleadings as a motion to dismiss" and "a decision that addresses the substance of the Rule 12(c) motion would ensure a 'just, speedy, and inexpensive determination' of the case").

Appendix B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

CAROL S. CYMBLER, on behalf of
herself and all others similarly
situated,

Plaintiff,

24-CV-2792

– against –

(AMD) (SIL)

**NEW YORK STATE, NASSAU
COUNTY, NASSAU COUNTY
TRAFFIC AND PARKING
VIOLATIONS AGENCY, VERRA
MOBILITY CORPORATION,
AMERICAN TRAFFIC
SOLUTIONS, INC.,**

Defendants

-----X

MEMORANDUM DECISION AND ORDER

ANN M. DONNELLY, United States District Judge:

The plaintiff brought this action on behalf of herself and other class members against New York State, Nassau County, Nassau County Traffic and Parking Violations Agency (“NCTPVA”), Verra Mobility Corporation and American Traffic Solutions,

Inc.¹ She claims that the defendants violated the United States and New York constitutions by installing and operating red light cameras in Nassau County. The plaintiff also brings claims for fraud, invasion of privacy, unjust enrichment, abuse of process, concert of action and racketeering. Nassau County and NCTPVA (the “Nassau defendants”) move to dismiss the complaint under Federal Rule of Civil Procedure 12(c) for lack of standing, failure to state a claim and because NCTPVA is not a suable entity. Verra Mobility Corporation and American Traffic Solutions, Inc. (the “corporate defendants”) move to dismiss the complaint under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) for lack of standing and failure to state a claim. For the reasons that follow, the Court grants the defendants’ motions to dismiss the federal claims and declines to exercise supplemental jurisdiction over the plaintiff’s state law claims.

BACKGROUND²

¹ The plaintiff voluntarily dismissed her claims against New York State. (ECF No. 31.) Although she did not specify which claims she was withdrawing, the Court construes her filing to dismiss the First, Second, Third and Fourth causes of action, which challenge the constitutionality of a New York State statute, VTL § 1111-b.

² The Court considers the complaint and the parties’ briefing. The Court also takes judicial notice of the Nassau defendants’ exhibits A and B, which are resolutions and ordinances passed by the Nassau County Legislature. (ECF Nos. 36-3, 36-4.) *See Lewis v. Livingston Cnty. Ctr. for Nursing & Rehab.*, 30 F. Supp. 3d 196, 203 (W.D.N.Y. 2014) (taking judicial notice of county resolution). However, the Court does not consider the corporate defendants’ exhibit A, which is a transcript of the plaintiff’s January 31, 2023 hearing before the NCTPVA. (ECF

I. Statutory Background

In 2009, New York amended the Vehicle and Traffic Law (“VTL”) to add VTL § 1111-b, which authorized counties, including Nassau County, to install and operate “traffic-control signal photo violation-monitoring devices” — red light cameras — at intersections throughout the county.³ (ECF No. 1 ¶¶ 20–21.) VTL § 1111-b(a)(1) “authorized and empowered” Nassau County “to adopt and amend a local law or ordinance establishing” a red light camera program. (*Id.* ¶ 22.) To implement the program, the Nassau County legislature passed Local Law 12-2009 on May 18, 2008, which became effective on June 18, 2009, and added Title 72 to the Miscellaneous Laws of Nassau County. (*Id.*) Title 72 § 1(a) provides that the Department of Public Works

No. 35-3.) *See Sira v. Morton*, 380 F.3d 57, 67 (2d Cir. 2004) (the “paraphrasing of certain events” at a hearing does not incorporate the hearing transcripts by reference into a complaint), *abrogated on other grounds by Pearson v. Callahan*, 555 U.S. 223 (2009). The Court also considers documents from other cases: exhibits A and B, which the plaintiff submitted with her opposition to the corporate defendants’ motion (ECF Nos. 38-2, 38-3), and exhibits A–D, which she submitted with her opposition to the Nassau defendants’ motion (ECF Nos. 39-2, 39-3, 39-4, 39-5). *See Kramer v. Time Warner Inc.*, 937 F.2d 767, 774 (2d Cir. 1991) (“[C]ourts routinely take judicial notice of documents filed in other courts . . . to establish the fact of such litigation and related filings.”). The Court does not consider plaintiff’s exhibit E, which is not mentioned in the complaint or incorporated by reference. (ECF No. 39-6.) *Id.* at 773.

³ VTL § 1111-b was supposed to expire in December 2014, but the state extended the expiration date. (ECF No. 1 ¶ 21.) At first, the legislature authorized red light cameras for 50 intersections, and then for 100 intersections. (*Id.* ¶ 21 n.5.)

“shall be authorized to install traffic-control signal photo violation-monitoring devices and to operate such devices at no more than fifty intersections within and under the jurisdiction of the County at one time.” (*Id.* ¶ 25.)

Under VTL § 1111-b(a)(1), Nassau County was to install and operate the red light cameras. (*Id.* ¶ 26.) Similarly, Title 72 placed responsibility for the installation and operation of red light cameras on the county’s Department of Public Works. (*Id.* ¶ 27.) According to the plaintiff, neither VTL § 1111-b(a)(1) nor Title 72 explicitly or implicitly authorized the county or the Department of Public Works to contract out the installation or operation to any other agencies or third-party vendors. (*Id.* ¶¶ 26–27.) The plaintiff alleges that Nassau County “intentionally ignored the limitations contained in the explicit statutory authorizations set forth in VTL § 1111-b(a)(1) and Title 72,” because the Department of Public Works’ only involvement with the program was to assist in selecting locations for the installation of these cameras. (*Id.* ¶¶ 28–29.) Instead, the plaintiff says, the NCTPVA “involved itself with the installation and operation of the red light cameras in Nassau County” by contracting with the corporate defendants to rent the red light cameras. (*Id.* ¶¶ 30–31.) The plaintiff maintains that the contracts violated VTL § 1111-b(a)(1) and Title 72, because they provided that the corporate defendants were responsible for installing, operating, and maintaining the red light cameras. (*Id.* ¶ 32.)

When a red light camera captures a driver violating red light laws, NCTPVA mails the

registered owner of the vehicle a notice of liability, which includes a fine. (*Id.* ¶ 33; *see also* ECF No. 1-1 at 2.) The owner can pay the fine in four different ways: (1) in person at NCTPVA's office, (2) by mail with a check or money order made out to Nassau County and sent to Nassau County (not NCTPVA), (3) calling a call center run by the corporate defendants, or (4) paying the corporate defendants electronically through a commercial website. (ECF No. 1 ¶ 35.) An owner who wants to contest the violation can request a hearing by completing a form attached to the violation notice and mailing it to Nassau County, not NCTPVA. (*Id.* ¶ 36; *see also* ECF No. 1-1 at 3.) A hearing is then scheduled before an officer employed by Nassau County and NCTPVA. (ECF No. 1 ¶ 36.) If the officer upholds the violation, the driver pays NCTPVA directly, at its office. (*Id.* ¶ 37.) If the officer dismisses the notice, the owner still has to pay NCTPVA fees, which are imposed by Nassau County. (*Id.* ¶ 38.)

II. Factual Background

The plaintiff concedes that she violated the red light law. (*Id.* ¶ 39.) At about 12:20 p.m. on June 15, 2022, she ran the red light at Old Country Road and South Oyster Bay Road. (*Id.* ¶¶ 41–42.) The red light camera, which was installed, operated and maintained by the corporate defendants pursuant to contracts with Nassau County and NCTPVA (*id.* ¶ 43), captured the violation in video and still images. (*Id.* ¶ 40.) 27 days later, the plaintiff received a notice of liability dated July 1, 2022.⁴ (*Id.* ¶¶ 39, 44.)

⁴ The ticket number was 1692202357250. (*Id.* ¶ 39.)

The notice stated that the plaintiff owed \$150, which included \$50 in fines, a \$45 “Driver Responsibility Fee” and a \$55 “Public Safety Fee.” (*Id.* ¶ 45.) According to the notice, the plaintiff could pay the \$150, as described above, or challenge the ticket and request a hearing by August 23, 2022. (*Id.* ¶¶ 46–51.)

The plaintiff completed the hearing form and mailed it to Nassau County. (*Id.* ¶ 52.) She received a response, dated August 9, 2022, advising her that the hearing would take place on January 31, 2023. (*Id.* ¶ 53.) On that day, the plaintiff and her lawyer⁵ appeared for the hearing at the NCTPVA offices; a Nassau County and NCTPVA attorney appeared for the county, and an officer from Nassau County and NCTPVA presided. (*Id.* ¶ 54.) Nassau County and NCTPVA presented evidence, including the red light camera photographs and video recording, and a certificate by an NCTPVA technician. (*Id.* ¶ 55.) The plaintiff now objects to the admission of the photographs and video recording, because of the “unconstitutionality of the enacting statutes.” (*Id.* ¶ 56.) Even if the statutes were constitutional, the plaintiff argues, the red light camera was “unauthorized and illegal” because it “was not installed or operated in compliance with the state and county statutes.” (*Id.* ¶ 57.) The plaintiff also alleges that the camera’s certificate “failed to meet the statutory requirements for admission as it

⁵ Counsel in this action also represented the plaintiff at the hearing.

conflicts with plaintiff's constitutional rights.” (*Id.* ¶ 58.)⁶

III. Procedural History

On April 15, 2024, the plaintiff brought this action on behalf of herself and similarly situated drivers. She alleges the following causes of action:⁷

- VTL § 1111-b violates the federal and New York constitutions, because it imposes liability only on motor vehicle drivers, not on bicyclists. (*Id.* ¶¶ 71–97.)
- Allowing a sworn affidavit as “evidence of the accusations made against Notice

⁶ According to the plaintiff, Nassau County and NCTPVA “allowed their own inadmissible (and illegal and unlawfully obtained) evidence” to be admitted, because their attorney offered the evidence and the officer presiding over the hearing worked for them. (*Id.* ¶ 60.)

⁷ The complaint lists three proposed classes, two of which include sub-classes. (*Id.* ¶ 63.) The “Ticketed Class” includes drivers who have received notices of liability, based on photographs and videos, since 2009. (*Id.*) The “Paying Class” includes people in the ticketed class who paid the fines. (*Id.*) This class is divided into three subclasses: those who did not dispute the notice (the “Non-disputing Subclass”), those who paid the fines after disputing the notice and appearing at a hearing (the “Disputing Subclass”), and those who disputed the notice and prevailed, but had to pay fees (the “Fee Only Subclass”). (*Id.*) The “RICO Class” includes people who suffered financial injuries and is divided into two subclasses: those who were injured more than four years before this action (the “Older Subclass”) and those were injured within four years of this action (the “Newer Subclass”). (*Id.*)

recipients” “create[s] a new exception to the generally applicable rules on hearsay.” (*Id.* ¶¶ 98–111.)

- Nassau County improperly gave the NCTPVA authority to issue notices of liability, “exceed[ing] the authorization limitations” established in General Municipal Law § 370-a(1), which provides that the “sole purpose of NCTPVA is ‘to administer and dispose of traffic and parking infractions.’” (*Id.* ¶¶ 112–24.)
- Title 72 “denies due process” because the NCTPVA prepares the notices of liability and adjudicates the challenges to the notices, “eliminat[ing] any concept of a fair tribunal.” (*Id.* ¶¶ 125–45.)
- The red light camera program fees are illegal taxes that violate the federal and New York state constitutions; the “Driver Responsibility Fee” is the same regardless of the actual administrative costs (*id.* ¶¶ 146–62), and the “Public Safety Fee” is not applied in “all matters involving traffic safety” (*id.* ¶¶ 163–80).
- The “Public Safety Fee” exceeds the maximum penalty allowed by state law. (*Id.* ¶¶ 181–90.)

- Photographic and video evidence should not be admitted at NCTPVA hearings (*id.* ¶¶ 320–56), and “live witnesses” should have to testify (*id.* ¶¶ 519–40).
- The defendants violated due process and denied equal protection under the state and federal constitutions. (*Id.* ¶¶ 541–49.)
- The “red light camera Notices and red light camera hearings” are treated as “quasi-civil and quasi-criminal hybrids;” thus, “due process requirements pertaining to criminal proceedings” — including the Sixth Amendment right to confront witnesses — “must apply.” (*Id.* ¶¶ 550–73.)
- The contracts between the Nassau defendants and the corporate defendants were fraudulent, because only the Nassau County Department of Public Works was legally authorized to install and operate the red light cameras. The defendants committed “fraud” by issuing the notices of liability based on the evidence from the cameras. (*Id.* ¶¶ 191–249.)
- The defendants invaded the plaintiff’s privacy, because the corporate defendants did not have private investigator licenses, which were required because the corporate defendants were “hired to obtain evidence

of a crime committed against the state.”
(*Id.* ¶¶ 250–70.)

- The defendants used the license plate and registration information from the photographs and video recordings to obtain confidential information about the plaintiff in violation of the Drivers Privacy Protection Act, 18 U.S.C. §§ 2721, 2722, and 2724. (*Id.* ¶¶ 273–97.)

In addition, the plaintiff claims:

- Unjust enrichment based on the payments from drivers who were issued notices of liability (*id.* ¶¶ 298–319; 357–94);
- Abuse of process because Nassau County and NCTPVA “turn[ed] ‘a blind eye’” to the supposedly illegal process (*id.* ¶¶ 395–431);
- Concert of action (*id.* ¶¶ 432–72);
- Fraud and abuse of process in connection Nassau County’s certifications about the red light camera program to the New York state and federal governments (*id.* ¶¶ 473–518);
- Causes of action under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1962 (*id.* ¶¶ 574–693).

The plaintiff seeks declaratory relief, an injunction prohibiting Nassau County and NCTPVA from contracting with the corporate defendants, disgorgement of money collected by the red light program, as well as compensatory, punitive and treble damages, pre-judgment and post-judgment interest and attorneys' fees. (*Id.* at 115–116.)⁸

The defendants move to dismiss the complaint pursuant to Federal Rules of Civil Procedure 12(b)(1), 12(b)(6) and 12(c). They argue that the plaintiff does not have Article III standing, did not exhaust administrative remedies and fails to state federal or state causes of action. The Nassau defendants argue that NCTPVA is not a suable entity, and in any event, that the law permits them to contract with the corporate defendants in connection with the red light camera program.

LEGAL STANDARD

“A case is properly dismissed for lack of subject matter jurisdiction under Rule 12(b)(1) when the

⁸ On May 20, 2024, Nassau County and NCTPVA answered the complaint and filed cross claims against New York State, Verra Mobility Corporation and American Traffic Solutions for common law contribution and indemnification, and against Verra Mobility Corporation and American Traffic Solutions for contractual indemnification. (ECF No. 8.) On July 5, 2024, Nassau County and NCTPVA voluntarily dismissed their cross claims against New York State. (ECF No. 24.) On July 31, 2024, the plaintiff voluntarily dismissed all claims against New York State. (ECF No. 31.) On August 29, 2024, Nassau County and NCTPVA withdrew their cross claims against the corporate defendants. (ECF No. 34.)

district court lacks the statutory or constitutional power to adjudicate it.” *Makarova v. United States*, 201 F.3d 110, 113 (2d Cir. 2000). “If plaintiffs lack Article III standing, a court has no subject matter jurisdiction to hear their claim.” *Cent. States Se. & Sw. Areas Health & Welfare Fund v. Merck–Medco Managed Care, L.L.C.*, 433 F.3d 181, 198 (2d Cir. 2005). “A plaintiff asserting subject matter jurisdiction has the burden of proving by a preponderance of the evidence that it exists.” *Makarova*, 201 F.3d at 113. However, “[b]ecause ‘standing is challenged on the basis of the pleadings, [the court must] accept as true all material allegations of the complaint, and must construe the complaint in favor of the complaining party.’” *MacIssac v. Town of Poughkeepsie*, 770 F.Supp.2d 587, 593 (S.D.N.Y. 2011) (quoting *Connecticut v. Physicians Health Servs. of Conn., Inc.*, 287 F.3d 110, 114 (2d Cir. 2002)).

To survive a Federal Rule of Civil Procedure 12(b)(6) motion to dismiss, a complaint must contain “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). While “detailed factual allegations” are not required, “[a] pleading that offers ‘labels and conclusions’ or a ‘formulaic recitation of the elements of a cause of action will not do.’” *Id.* (quoting *Twombly*, 550 U.S. at 555). Pleadings are construed in the light most

favorable to the plaintiff. *Hayden v. Paterson*, 594 F.3d 150, 160 (2d Cir. 2010).

The plaintiff argues that the Nassau defendants' Rule 12(c) motion should be denied as premature and not converted into a Rule 12(b)(6) motion, and that the Court should deny motion in any event. (ECF No. 39 at 8–11.) “The standard for granting a Rule 12(c) motion for judgment on the pleadings is identical to that for granting a Rule 12(b)(6) motion for failure to state a claim.” *Lively v. WAFRA Inv. Advisory Grp., Inc.*, 6 F.4th 293, 301 (2d Cir. 2021) (quoting *Lynch v. City of New York*, 952 F.3d 67, 75 (2d Cir. 2020)). Accordingly, the Court construes the Nassau defendants' motion as a Rule 12(b)(6) motion. *See Ezra v. Bristol-Myers Squibb Co.*, 784 F. App'x 48, 49 (2d Cir. 2019) (finding that the district court properly considered the defendant's untimely 12(c) motion); Wright & Miller, *Federal Practice and Procedure* § 1368 (3d ed.) (“Because of the similarity between the Rule 12(c) and Rule 12(b) standards, courts typically will construe a premature Rule 12(c) motions as if it were brought under Rule 12(b) and a late Rule 12(b) motion . . . as if it were brought under Rule 12(c).”).

DISCUSSION

I. Article III Standing

To establish Article III standing, a plaintiff must “show that the conduct of which he complains has caused him to suffer an ‘injury in fact’ that a favorable judgment will redress.” *Palmieri v. Town of*

Babylon, No. 01-CV-1399, 2006 WL 1155162, at *5 (E.D.N.Y. Jan. 6, 2006), *aff'd*, 277 F. App'x. 72 (2d Cir. 2008) (citation omitted). The defendants argue that the plaintiff's "interest in avoiding the consequences of running a red light does not confer Article III standing." (ECF No. 35-1 at 10; *see also* ECF No. 36-1 at 8–10.) The defendants rely on *Bell v. Am. Traffic Sols., Inc.*, in which the Fifth Circuit held that the plaintiffs, who paid fines after red light cameras caught them running red lights, did not have standing to bring a negligence per se claim against American Traffic Solutions, which installed and operated the cameras. 371 F. App'x 488, 492 (5th Cir. 2010). The plaintiff responds that *Bell* is different because the plaintiffs sued for negligence under Texas law and claimed that they would not have been caught if ATS had not installed and operated the cameras. (ECF No 39 at 11–12.)

a. Injury

The plaintiff cites the following as sources of her injuries: the allegedly unconstitutional red light statutes, the allegedly invalid contracts between the Nassau and corporate defendants and denial of due process in connection with her challenge to the citation. The *Bell* plaintiffs, on the other hand, based their claims on a Texas statute prohibiting "investigations compan[ies]" from operating without a license; they also claimed that "their violations would not have been discovered were it not for [American Traffic Solutions]." *Bell*, 371 F. App'x at 490. Courts have routinely found that plaintiffs have standing to challenge the constitutionality of state and county statutes and regulations, including those

related to fees. *See, e.g., Kwong v. Bloomberg*, 876 F. Supp. 2d 246, 252 (S.D.N.Y. 2012), *aff'd*, 723 F.3d 160 (2d Cir. 2013) (finding standing where plaintiffs who paid a fee challenged the city statute establishing the fee as unconstitutional); *New York State Firearms Ass'n v. James*, No. 23-CV-6524, 2024 WL 1932050, at *4 (W.D.N.Y. May 2, 2024) (finding that plaintiffs had standing to challenge fees associated with background checks imposed by state statute). The plaintiff's injury is therefore more than simply an "interest in evading the law." *Bell*, 371 F. App'x at 490.

The corporate defendants' reliance on *Palmieri v. Town of Babylon*, (ECF No. 35-1 at 11), is also misplaced. Palmieri ignored a rental permit law and rented his property without the necessary permit. *Palmieri*, 2006 WL 1155162, at *6. The Honorable Sterling Johnson held that Palmieri did not have standing, and that his "failure to comply with the law by obtaining a permit undermines any claim he has that the Rental Permit Law as enforced violated due process with regard to his Property." *Id.* Judge Johnson observed that Palmieri "could not have suffered the alleged injury of being deprived due process . . . upon the statute's enactment" because he did not buy the property until years after the town enacted the statute. *Id.* at *5. Here, on the other hand, the plaintiff does not base her due process claims on a statute that she ignored; rather, she alleges that she was denied due process because the methods to challenge the hearing officer's finding were deficient.

Leder v. Am. Traffic Sols., Inc., 81 F. Supp. 3d 211 (E.D.N.Y.), *aff'd*, 630 F. App'x 61 (2d Cir. 2015) provides the appropriate analogy. In that case, Leder ran a red light, got a ticket and sued the same defendants the plaintiff is suing in this case. *Id.* at 216. Leder did not contest the ticket and paid the fine, but claimed the defendants violated due process because they reduced the yellow light times, forcing drivers to run red lights, in order to generate revenue. *Id.* at 217. The Honorable Arthur Spatt rejected the defendants' standing claim, because Leder's "allegation that she paid a fine of \$65.00 as a result of the Defendants' actions, although for a small amount, satisfies the injury-in-fact requirement." *Id.* at 221. Like Leder, the plaintiff in this case alleges "that she paid a fine . . . as a result of the Defendants' actions . . . [which] satisfies the injury-in-fact requirement." *Id.*

a. Causation

The defendants also argue that the plaintiff's "own allegations confirm that her alleged 'harm' is not 'fairly traceable' to" their conduct, because she "does not challenge that she violated the law." (ECF No. 35-1 at 11; *see also* ECF No. 36-1 at 10–11.) The corporate defendants argue that, like in *Palmieri*, "it was Plaintiff's traffic infraction — her failure to comply with the VTL — that caused her alleged injury, not the red-light camera system that recorded her unlawful act." (ECF No. 35-1 at 11.) Judge Spatt rejected this argument when the defendants made it in *Leder*. *See Leder*, 81 F. Supp. 3d at 221. "Article III causation does not require that a plaintiff demonstrate that her injury was directly caused by

the Defendant’s actions; rather, she merely needs to show that her injury was ‘fairly traceable’ to the defendant’s conduct.” *Id.* (quoting *Rothstein v. UBS AG*, 708 F.3d 82, 92 (2d Cir. 2013)). The plaintiff’s claim — that the defendants caused her injuries by establishing and operating the red light program — is sufficient at this stage of the litigation to show causation. *Id.*; see also *Toretto v. Donnelley Fin. Sols., Inc.*, 523 F. Supp. 3d 464, 471 (S.D.N.Y. 2021) (“[I]ndirectness is not necessarily fatal to standing, because the fairly traceable standard is lower than that of proximate cause.” (citation omitted)).

b. Redressability

The Court also considers the question of redressability, even though the defendants have not raised it. See *In re Univ. Urology Data Sec. Incident Litig.*, No. 23-CV-6484, 2025 WL 1002355, at *4 (S.D.N.Y. Mar. 31, 2025) (“While Defendants advance no argument on traceability or redressability, the Court considers these prongs *sua sponte*.”). The plaintiff seeks declaratory relief, an injunction prohibiting the Nassau defendants from contracting with the corporate defendants, disgorgement of profits from the red light camera program and damages. (ECF No. 1 at 115–116.) “A plaintiff must demonstrate standing separately for each form of relief sought.” *MacIssac*, 770 F.Supp.2d at 593 (citation omitted).

The plaintiff seeks damages for economic injuries she sustained because of the defendants’ allegedly unconstitutional conduct. Accordingly,

awarding damages for the fines the plaintiff paid will redress her injury. *See Leder*, 81 F. Supp. 3d at 222. However, as Judge Spatt found in *Leder*, “the Plaintiff’s request for [injunctive] relief appears less plausible.” *Id.* “In seeking prospective relief like an injunction, ‘a plaintiff must show that he can reasonably expect to encounter the same injury again in the future — otherwise there is no remedial benefit that he can derive from such judicial decree.’” *Id.* (quoting *MacIssac*, 770 F.Supp.2d at 593). The plaintiff does not allege that she will be cited for running red lights if the Court does not grant her injunctive relief. Even if she runs a red light and gets a ticket, that “chance is too speculative to confer Article III standing on the Plaintiff’s claim for a permanent injunction.” *Id.*; *see also Worthy v. City of Phenix City, Alabama*, 930 F.3d 1206, 1224–25 (11th Cir. 2019) (“Appellants lack standing to bring their claims for injunctive relief [related to a red-light-camera ordinance] because they have not sufficiently alleged a threat of future harm.”). Accordingly, the plaintiff’s claims for injunctive relief are dismissed for lack of standing.

II. Failure to Exhaust and Preclusion

The defendants argue that the plaintiff did not exhaust her administrative remedies. According to the corporate defendants, the plaintiff’s “failure to raise the arguments contained in her Complaint during her hearing before the NCTPVA bars her from now raising them here.” (ECF No. 35-1 at 12.) They say that is so that even if the hearing was a judicial rather than administrative proceeding, as the plaintiff claims. (ECF No. 40 at 8–9.) The Nassau

defendants argue that the plaintiff should be “estop[ped] . . . from now bringing the present action” because she chose “to pay the fine instead of pursuing an appeal of her hearing.” (ECF No. 36-1 at 11.) The plaintiff responds that exhaustion is not required, and that even if it is, she exhausted administrative remedies by having a hearing. (ECF No. 38 at 14–17.)⁹

The plaintiff brings constitutional claims under 42 U.S.C. § 1983, which does not require exhaustion. *See Patsy v. Bd. of Regents of State of Fla.*, 457 U.S. 496, 500–01 (1982) (“[T]his Court has stated categorically that exhaustion is not a prerequisite to an action under § 1983.”); *see also Knutson v. Vill. of Lakemoor*, No. 18-CV-1804, 2018 WL 10509387, at *8 n.12 (N.D. Ill. Dec. 4, 2018), *aff’d*, 932 F.3d 572 (7th Cir. 2019) (exhaustion was not required where plaintiff challenged red light camera ordinance); *Vermont Right to Life Comm., Inc. v. Sorrell*, 221 F.3d 376, 382 n.1 (2d Cir. 2000) (“For purposes of constitutional standing, there is no requirement that a plaintiff challenging the facial validity of a state statute first raise its claim in state court.”).

Nor does claim preclusion apply. In Section 1983 cases, “a federal court must give to a state-court judgment the same preclusive effect as would be given that judgment under the law of the State in which the judgment was rendered.” *Knutson*, 2018 WL 10509387, at *7 (quoting *Migra v. Warren City*

⁹ The plaintiff also challenges the defendants’ description of the hearing. (ECF No. 38 at 17–18.)

Sch. Dist. Bd. of Educ., 465 U.S. 75, 81 (1984)).¹⁰ Under New York Law, “[r]es judicata, or claim preclusion, is invoked to prevent a party . . . from relitigating a previously litigated action” and applies “to all issues and theories of recovery applicable to the cause of action, whether or not they were actually litigated.” *Hirschfeld v. Hogan*, 18 Misc. 3d 531, 534 (N.Y. Sup. Ct. 2007). Therefore, “once a claim is brought to a final conclusion, all other claims arising out of the same transaction or series of transactions are barred, even if based on different theories or even if seeking a different remedy.” *Id.*

While conceding that “a number of issues raised in the complaint were not put forth before NCTPVA,” the plaintiff argues that “the presiding judicial hearing officer did not have the authority to rule on those issues.” (ECF No. 38 at 18.) Claim preclusion “contemplates that the parties had a ‘full and fair’ opportunity to litigate the initial determination.” *People v. Evans*, 94 N.Y.2d 499, 501 (2000). The plaintiff could not have litigated her claims at the hearing because they are not defenses under VTL §

¹⁰ The corporate defendants cite *Idris v. City of Chicago*, 552 F.3d 564 (7th Cir. 2009), where plaintiffs challenged the city’s red light camera program. (ECF No. 40 at 9.) The Seventh Circuit observed that the city “might well have had a good argument that claim preclusion bars this litigation” but the city did not advance “this affirmative defense.” *Idris*, 552 F.3d at 565. In *Knutson*, another challenge to a red light camera program, the district court acknowledged that *Idris* “mention[s], in dicta, that claim preclusion may be an available affirmative defense to claims against city ordinances,” but found that the plaintiffs were not precluded from bringing suit even though they did not raise their arguments in the administrative hearing. 2018 WL 10509387, at *7–8.

1111-b.¹¹ Accordingly, the plaintiff's claims are not precluded. *See also Knutson*, 2018 WL 10509387, at *8 (preclusion was not available where the plaintiffs were “prevented from challenging allegedly unlawful notices or administrative hearing procedures” and where “a hearing officer would not have been able to grant the relief [the plaintiffs’ sought] under their limited powers”).

III. NCTPVA

The Nassau defendants argue that NCTPVA is a non-suable entity because it “is merely an administrative arm of the municipality of Nassau County” and does not have its own legal identity. (ECF No. 36-1 at 11–12 (quoting *Davis v. Nassau Cnty.*, No. 06-CV-4762, 2011 WL 5401663, at *3 (E.D.N.Y. Nov. 5, 2011).) According to the defendants, the “legal reality of NCTPVA being legally identical to NASSAU has severe substantive ramifications” for the plaintiff's complaint, because she alleges that Nassau County improperly authorized or empowered NCTPVA. (*Id.* at 12.) They argue that because NCTPVA is a non-suable entity, “the many causes of action premised upon the mistaken argument that NASSAU improperly enlarged NCTPVA's authority and/or powers [are] null[.]” (*Id.*) The plaintiff responds that *Davis*, which Judge Spatt also decided, does not apply because the motion for summary judgment was unopposed, and

¹¹ VTL § 1111-b has two defenses — that the car was reported stolen before the violation, VTL § 1111-b(i), and that the red light camera was malfunctioning at the time of the alleged violations, VTL § 1111-b(o).

Judge Spatt did not consider NCTPVA's history. (ECF No. 39 at 17–18.) The plaintiff asserts that the “statute and legislative history” show that NCTPVA is “not an administrative arm of Nassau but a branch of the District Court,” and that NCTPVA's website includes disclaimers about Nassau County and NCTPVA that undermine the defendants' claim that NCTPVA cannot be sued. (*Id.* at 18–20.)

Judge Spatt observed that “under New York law, ‘departments that are merely administrative arms of a municipality do not have a legal identity separate and apart from the municipality, and therefore cannot ... be sued.’” *Davis*, 2011 WL 5401663, at *3 (quoting *Hartline v. Gallo*, 546 F.3d 95, 99 n.3 (2d Cir. 2008)). Judge Spatt found that “[t]here is no doubt that the Nassau County Traffic & Parking Violations Agency is merely an administrative arm of the municipality of Nassau County,” and granted summary judgment for Nassau County. *Id.* The Court agrees with that sound logic. *See also* Nassau County Administrative Code § 24-1.1 (“[T]here shall be a department of the Nassau County government known as the Nassau County Traffic and Parking Violations Agency, which shall operate under the control and direction of the County Executive.”). The plaintiff's claims against NCTPVA are dismissed because it does “not have a legal identity separate and apart from the municipality and, therefore, cannot be sued.” *Davis*, 2011 WL 5401663, at *3; *see also Polite v. Town of Clarkstown*, 60 F. Supp. 2d 214, 216 (S.D.N.Y. 1999) (“[M]unicipal departments in this State . . . are not amenable to suit, and no claims can lie directly against them.”).

IV. Failure to State a Claim

The defendants ask the Court to dismiss all of the plaintiff's claims for failure to state a claim. (ECF No. 35-1 at 13–21; ECF No. 36-1 at 14–22.) The Court addresses each claim in turn.¹²

a. Due Process

Four of the plaintiff's claims are federal due process claims against the Nassau defendants. (See ECF No. 1 ¶¶ 125–35 (Sixth Cause of Action); ¶¶ 320–41 (Nineteenth Cause of Action); ¶¶ 541–44 (Thirty-Third Cause of Action); ¶¶ 550–73 (Thirty-Fifth Cause of Action).)¹³ The basis for her claims is that NCTPVA issues the notices of liability and adjudicates challenges to the notices, and that evidence from the red light cameras — photographs and videos — are admissible at NCTPVA hearings, as are sworn affidavits in lieu of witnesses.

The Fifth Amendment Due Process Clause states that no person shall “be deprived of life, liberty, or property, without due process of law;” the Fourteenth Amendment Due Process Clause “mirrors this language.” *Marvin v. Peldunas*, No. 21-1824-CV, 2022 WL 2125851, at *1 (2d Cir. June 14, 2022). “Due process protection has two components, a substantive due process component and a procedural

¹² The plaintiff did not bring federal claims against the corporate defendants. (ECF No. 38 at 19–24.)

¹³ As noted above, the plaintiff withdrew her claims against New York state, including the third and fourth causes of action challenging the constitutionality of the statute. (ECF No. 31.)

due process component.” *Avramenkov v. I.N.S.*, 99 F. Supp. 2d 210, 215 (D. Conn. 2000). “The substantive due process component precludes the government from engaging in conduct that ‘shocks the conscience’ or interferes with rights ‘implicit in the concept of ordered liberty.’” *Id.* (quoting *United States v. Salerno*, 481 U.S. 739, 746 (1987)). “The procedural due process component precludes the government from depriving a person of life, liberty, or property in an unfair manner.” *Id.* (citing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)).

i. Substantive Due Process

A plaintiff making a substantive due process claim must sufficiently allege “(1) a ‘valid property interest’ or ‘fundamental right’; and (2) that the defendant infringed on that right by conduct that ‘shocks the conscience’ or suggests a ‘gross abuse of governmental authority.’” *Leder*, 81 F. Supp. 3d at 223 (quoting *Sloup v. Loeffler*, No. 5–CV–1766, 2008 WL 3978208, at *10 (E.D.N.Y. Aug. 21, 2008)). “To satisfy this standard, a plaintiff must show that the government decision it challenges ‘was arbitrary or irrational or motivated by bad faith.’” *Dubin v. Cnty. of Nassau*, 277 F. Supp. 3d 366, 393 (E.D.N.Y. 2017) (quoting *Rosa R. v. Connelly*, 889 F.2d 435, 439 (2d Cir. 1989)). Notably, “the scope of rights afforded by the Due Process clause is extremely limited.” *Leder*, 81 F. Supp. 3d at 223.

“Not all property rights are entitled to the protections of substantive due process,” which protects only “those interests that are implicit in the

concept of ordered liberty, i.e., those rights that are so rooted in the traditions and conscience of our people as to be ranked as fundamental.” *Id.* at 223–24 (citations omitted); *see also Venghaus v. City of Hartford*, No. 06–CV-1452, 2012 WL 1050014, at *8 (D. Conn. Mar. 27, 2012) (“The protections of substantive due process have for the most part been accorded to matters relating to marriage, family, procreation, and the right to bodily integrity.”). The property interest that the plaintiff alleges is her “financial liability” for the red light violation — a \$150 fee. (See ECF No. 1 ¶ 45.) But “courts have repeatedly found that the substantive Due Process clause does not protect plaintiffs from modest fines.” *Leder*, 81 F. Supp. 3d at 224. Nor does the challenged conduct — issuing and adjudicating notices of liability and permitting certain evidence at an NCTPVA hearing — “shock[] the conscience” or constitute a “gross abuse of governmental authority.” *Id.* at 223.

ii. *Procedural Due Process*

A plaintiff bringing a Section 1983 procedural due process claim “must allege both the existence of a protected liberty or property interest, and that he or she was deprived of that interest without being afforded sufficient process.” *Foskey v. Corp. State of New York*, No. 22-CV-2546, 2022 WL 3228271, at *5 (E.D.N.Y. Aug. 10, 2022). Procedural due process requires, at a minimum, that the state afford people “some kind of hearing” before depriving them of a liberty or property interest. *Id.* (quoting *DiBlasio v. Novello*, 344 F.3d 292, 302 (2d Cir. 2003)). In “evaluating the adequacy of a challenged procedure,”

courts balance the following factors: “(1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Dubin*, 277 F. Supp. 3d at 388–89 (quoting *Nat’l Org. for Women v. Pataki*, 261 F.3d 156, 167–68 (2d Cir. 2001)).

New York courts have determined that VTL § 1111-b’s red light camera program is civil, not criminal. See *Krieger v. City of Rochester*, 978 N.Y.S.2d 588, 598–99 (Sup. Ct. 2013) (“[T]he statutory scheme demonstrates an unequivocal intent to create a civil enforcement mechanism, not a criminal one.”); *id.* at 599 (collecting cases).¹⁴ Accordingly, the adjudication procedure “require[s] a lower level of due process protections.” *Id.* at 600. As explained above, the \$150 fee that the plaintiff paid for violating the red light law is not a protected property interest. On the other hand, the

¹⁴ The plaintiff alleges that the “red light camera Notices and red light camera hearings [are] quasi-civil and quasi-criminal hybrids” because the notices of liability provide that failure to respond will result in a “default conviction.” (ECF No. 1 ¶¶ 557–60.) But the statute “expressly states that a finding of liability ‘shall not be deemed a conviction.’” *Krieger*, 978 N.Y.S.2d at 599 (quoting VTL § 1111-b(f)). Moreover, VTL § 1111-b “does not allow for a conviction exposing the offender to potential jail time,” and “the alleged infraction is heard by an administrative body and not a criminal court.” *Id.*

government has an interest in enforcing traffic laws, and “the Legislature went to great lengths to design the red light program to be a minimal invasion into privacy by prohibiting photographs of the ‘driver, the passengers, or the contents of the vehicle.’” *Krieger*, 978 N.Y.S.2d at 601 (quoting VTL § 1111-b(a)(2)). In any case, “adequate procedures exist[] to safeguard plaintiffs’ property rights.” *Dubin*, 277 F. Supp. 3d at 389. The notice of liability “provides sufficient detail of the allegations . . . as amplified by an opportunity to view the video of the alleged infraction via the internet, and the matter is set for a hearing at which time the owner is given a chance to contest the alleged infraction.” *Krieger*, 978 N.Y.S.2d at 601 (quoting VTL § 1111-b(g)). The plaintiff took advantage of this procedure and contested her notice of liability at a hearing. (ECF No. 1 ¶¶ 52–54.) A vehicle owner can also “appeal any guilt adjudication to an Examiner Panel at the Bureau,” *Krieger*, 978 N.Y.S.2d at 602; the plaintiff did not avail herself of this opportunity. “The fact that a [NCTPVA] technician inspects the red light camera footage and issues a sworn or affirmed certificate, and another [NCTPVA] employee conducts the hearings, does not condemn the red light camera program.”¹⁵ *Id.* Accordingly, the plaintiff’s due process claims are dismissed.

¹⁵ The *Krieger* court identified additional safeguards for vehicle owners. “At the hearing, the owner can have the assistance of an attorney if desired, can subpoena witnesses and records, and is not restrained by the traditional rules of evidence The hearing also provides the owner with the ability to pursue the defense that the red light camera was malfunctioning The owner’s guilt must be shown by ‘substantial evidence.’” 978 N.Y.S.2d at 602 (quoting VTL § 1111-b(n), VTL § 240(2)(b), (c) & (d)).

b. Equal Protection

Two of the plaintiff's claims are for federal equal protection violations. (See ECF No. 1 ¶¶ 163–72 (Tenth Cause of Action); ¶¶ 545–49 (Thirty-Fourth Cause of Action)).¹⁶ According to the plaintiff, VTL § 1111-b treats motor vehicle owners differently than bicycle owners, the Public Safety Fee treats red light camera violations differently than parking infractions, and people who are caught by red light cameras are denied the “right to confront their accuser.”

“In order to establish an equal protection claim, the plaintiff must show that: (1) [s]he was selectively treated compared with others similarly situated; and (2) the selective treatment was based on impermissible considerations, such as membership in a suspect class, intent to inhibit or punish the exercise of a constitutional right, or malicious or bad faith intent to injure.” *Margiotta v. Kaye*, 283 F. Supp. 2d 857, 864 (E.D.N.Y. 2003). As for the first requirement, “[e]qual protection challenges to government classifications generally are concerned with distinctions based on an ‘identifiable group.’” *Akbar v. Daley*, No. 09-CV-1289, 2009 WL 3055322, at *3 (N.D. Ill. Sept. 18, 2009). In *Akbar*, also a challenge to red light cameras, the court found that a plaintiff's equal protection classifications — drivers

¹⁶ The plaintiff argues that the Nassau defendants cannot defend equal protection challenges to a New York statute's constitutionality (ECF No. 39 at 24), but that argument is moot because she withdrew her constitutional claims about the statute, which includes the first and second causes of action.

in the downtown area versus drivers in other areas — were “problematic,” because “the constituent members of the two groups constantly are in flux.” *Id.* The same is true in this case. The groups of people who own cars, ride bikes, commit parking violations and run red lights are constantly changing. Nor has the plaintiff alleged that these classifications are “based on impermissible considerations, such as membership in a suspect class, intent to inhibit or punish the exercise of a constitutional right, or malicious or bad faith intent to injure.” *Margiotta*, 283 F. Supp. 2d at 864.

Because “the alleged unequal treatment implicates neither a ‘fundamental right’ nor is based on a suspect or quasi-suspect distinction such as race, religion, or alienage, the Court must apply a ‘rational basis review’ to the statutory distinction.” *Id.* (quoting *Lamson v. Blumenthal*, 75 F. App’x. 811, 812 (2d Cir. 2003)). A legislative classification subject to rational basis review “must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for classification;” “[t]he actual motivations of the enacting governmental body are irrelevant.” *Id.* (citations omitted). The burden is on the plaintiff to negate “any reasonably conceivable state of facts that could provide a rational basis for the classification.” *Board of Trustees of Univ. of Ala. v. Garrett*, 531 U.S. 356, 367 (2001) (citation omitted). The plaintiff has not come close to meeting this burden, nor does she attempt to do so. The plaintiff claims only that the red light camera program “constitutes an impermissible selective treatment,” without addressing whether the program

serves a legitimate governmental purpose. (*See, e.g.*, ECF No. 39 at 25–26.) In any event, there is a rational basis for the red light camera program. For example, it is rational to conclude that car drivers who run red lights pose a greater danger to public safety than bicycle riders who run red lights or than drivers who violate parking regulations. The equal protection claims are dismissed.

c. Takings Clause

The plaintiff brings a federal Takings Clause claim. She alleges that the “Driver Responsibility Fee” is an illegally imposed tax, not an administrative fee, because the defendants impose it regardless of whether the driver has a hearing. (*See* ECF No. 1 ¶¶ 146–54 (Eighth Cause of Action).) The defendants argue that courts have upheld the fee, citing *Dubin*, 277 F. Supp. 3d at 393, and *Guthart v. Nassau Cnty.*, No. 604271-2016, 2022 N.Y. Misc. LEXIS 42415 (Sup Ct. Nassau County 2022). (ECF No. 35-1 at 17; ECF No. 36-1 at 17–18.) The plaintiff responds that the claims in those cases are different. (ECF No. 39 at 26.)¹⁷

“To plead a taking under the Fifth (or Fourteenth) Amendment, a plaintiff must allege that (1) plaintiff possessed a valid property interest; (2) there was a taking of that property interest under color of state law; and (3) the taking was without just compensation.” *Dubin*, 277 F. Supp. 3d at 394. In *McCarthy v. City of Cleveland*, 626 F.3d 280 (6th Cir.

¹⁷ *Dubin* may no longer be good law after *Knick v. Twp. of Scott, Pennsylvania*, 588 U.S. 180 (2019).

2010), the court distinguished between takings of “a sum of money from a specific fund” — which is an improper taking — and a taking that “merely impose an obligation on a party to pay money on the happening of a contingency” — which is not an improper taking. *Id.* at 284. Because the Driver Responsibility Fee is not a seizure of funds from the plaintiff’s bank account, but a fee that a driver must pay for violating the red light laws, the fee is not an improper taking.

d. The Drivers Privacy Protection Act

The plaintiff brings two causes of action for invasion of privacy under the Drivers Privacy Protection Act (DPPA), 18 U.S.C. §§ 2721, 2724. (*See* ECF No. 1 ¶¶ 250–82 (Fifteenth Cause of Action); ¶¶ 283–97 (Sixteenth Cause of Action).) First, she maintains that the Nassau defendants did not ensure that the corporate defendants were qualified; she claims that the corporate defendants did not have a private investigative license, which New York law requires for “any person or entity hired to obtain evidence of a crime committed against the state.” Her second claim is that the Nassau and the corporate defendants invaded her privacy by getting vehicle owner information from the Department of Motor Vehicles. As support for this proposition, the plaintiff cites the supposed “illegality” of the contracts between the Nassau and corporate defendants, as well as the “illegal” photographs and recordings that showed the plaintiff running the red light; the plaintiff says that the Nassau defendants violated 18 U.S.C. § 2722(a) when they used this evidence to get confidential information about vehicle owners.

These conclusory allegations are insufficient to state a claim. The plaintiff claims that New York requires a private investigator license in this context, but does not identify the law that establishes this requirement, other than to cite “New York State law.” (*See* ECF No. 1 ¶¶ 262–63.) Nor does the plaintiff explain how the photographs and videos from the red light cameras are “evidence of a crime.” As explained above, the red light camera program is civil in nature. *See Krieger*, 978 N.Y.S.2d at 598–99 (“[T]he statutory scheme demonstrates an unequivocal intent to create a civil enforcement mechanism, not a criminal one.”).

The plaintiff claims that the defendants violated the DPPA by getting vehicle owner information from the Department of Motor Vehicles. The plaintiff cites the supposed “illegality” of the contracts between the Nassau and corporate defendants, as well as the “illegal” photographs and recordings that showed the plaintiff running the red light; the plaintiff says that the Nassau defendants violated 18 U.S.C. § 2722(a) when they used this evidence to get confidential information about vehicle owners. (*See* ECF No. 1 ¶¶ 274–78.)¹⁸

The DPPA provides a cause of action against “[a] person who knowingly obtains, discloses or uses personal information, from a motor vehicle record, for a purpose not permitted under this chapter.” 18

¹⁸ The plaintiff also alleges that the defendants are liable for damages pursuant to 18 U.S.C. § 2724(b)(1), reasonable attorneys’ fees pursuant to § 2724(b)(3) and equitable relief pursuant to § 2724(b)(4).

U.S.C. § 2724(a). “Permissible use” includes (1) “use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf of a Federal, State, or local agency in carrying out its functions,” § 2721(b)(1); (2) “use in connection with matters of motor vehicle or driver safety,” § 2721(b)(2); and (3) “use in connection with any civil, criminal, administrative, or arbitral proceeding in any Federal, State, or local court or agency,” § 2721(b)(4). The plaintiff does not address the permissible purposes in § 2721 or the caselaw that discusses permissible use under the DPPA. *See, e.g., King v. Creed*, No. 14-CV-0165, 2017 WL 11712225, at *9 (N.D.N.Y. Feb. 17, 2017) (under the DPPA, “disclosure of such information is permitted for use ‘by any governmental agency’ or by ‘any private person or entity acting on behalf of a Federal, State or local agency in carrying out its functions’” (quoting 18 U.S.C. § 2721(b)(1))); *id.* (“The DPPA also allows states to divulge drivers’ personal information . . . in connection with court, agency, or self-regulatory body proceedings.” (quoting 18 U.S.C. § 2721(b)(4))). The invasion of privacy claims based on the DPPA are dismissed.

e. Racketeering

Finally, the plaintiff brings claims for violations of the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1961 et seq. (*See id.* ¶¶ 574–670 (Thirty-Sixth Cause of Action); ¶¶ 671–93 (Thirty-Seventh Cause of Action).) “To state a plausible RICO claim, a plaintiff must allege: (1) that the defendant (2) through the commission of

two or more acts (3) constituting a ‘pattern’ (4) of ‘racketeering activity’ (5) directly or indirectly invests in, or maintains an interest in, or participates in (6) an ‘enterprise’ (7) the activities of which affect interstate or foreign commerce.” *Foskey*, 2022 WL 3228271, at *6 (quoting *Williams v. Affinion Grp., LLC*, 889 F.3d 116, 123-24 (2d Cir. 2018)). Because “the core of a RICO civil conspiracy is an agreement to commit predicate [RICO] acts, such a complaint, at the very least, must allege specifically such an agreement.” *Id.* (quoting *Wolhendler v. Goldberg*, No. 19-CV-457, 2020 WL 5658790, *2 (E.D.N.Y. Sept. 23, 2020) (cleaned up)). A RICO conspiracy claim will therefore “be dismissed where the plaintiff alleges no facts to show specifically that the defendants had any meeting of the minds in the alleged violations.” *Wolhendler*, 2020 WL 5658790, at *2 (citation omitted).

Foskey involved a similar RICO claim about Nassau County’s red light camera program. The court rejected the claim because “[u]nder no possible interpretation of the facts has Plaintiff plausibly alleged any predicate acts, much less a pattern of RICO activity, nor does he sufficiently allege the existence of a RICO enterprise that affects interstate or foreign commerce.” 2022 WL 3228271, at *6. That is true here, as well. The only agreement the plaintiff alleges is the contract between the Nassau and corporate defendants to operate and install the red light cameras. A contract to perform services is not a “meeting of the minds” to “commit RICO predicate acts.” *Wolhendler*, 2020 WL 5658790, at *2. The racketeering claims are dismissed.

V. Supplemental Jurisdiction Over Remaining State Law Claims

“[A] district court ‘may decline to exercise supplemental jurisdiction’ if it ‘has dismissed all claims over which it has original jurisdiction.’” *Kolari v. New York-Presbyterian Hosp.*, 455 F.3d 118, 122 (2d Cir. 2006) (quoting 28 U.S.C. § 1367(c)(3)). The Court dismisses all the federal claims over which it has original jurisdiction, and it declines to exercise supplemental jurisdiction over the plaintiff’s remaining state law claims alleging violations of the New York State constitution (ECF No. 1 ¶¶ 112–24 (Fifth Cause of Action); ¶¶ 136–45 (Seventh Cause of Action); ¶¶ 155–62 (Ninth Cause of Action); ¶¶ 173–80 (Eleventh Cause of Action); ¶¶ 181–90 (Twelfth Cause of Action); ¶¶ 342–56 (Twentieth Cause of Action); ¶¶ 519–32 (Thirty-First Cause of Action); ¶¶ 533–40 (Thirty-Second Cause of Action)), fraud (*id.* ¶¶ 191–213 (Thirteenth Cause of Action); ¶¶ 214–49 (Fourteenth Cause of Action); ¶¶ 473–89 (Twenty-Eighth Cause of Action)), unjust enrichment (*id.* ¶¶ 298–309 (Seventeenth Cause of Action); ¶¶ 310–319 (Eighteenth Cause of Action); ¶¶ 357–70 (Twenty-First Cause of Action); ¶¶ 371–81 (Twenty-Second Cause of Action); ¶¶ 382–94 (Twenty-Third Cause of Action)), abuse of process (*id.* ¶¶ 395–415 (Twenty-Fourth Cause of Action); ¶¶ 416–31 (Twenty-Fifth Cause of Action); ¶¶ 490–503 (Twenty-Ninth Cause of Action); ¶¶ 504–18 (Thirtieth Cause of Action)), and concert of action (*id.* ¶¶ 432–50 (Twenty-Sixth Cause of Action); ¶¶ 451–72 (Twenty-Seventh Cause

of Action)).¹⁹ See *Kolari*, 455 F.3d at 123 (“Plaintiffs’ federal-law claims were eliminated on a motion to dismiss, prior to the investment of significant judicial resources, and we can discern no extraordinary inconvenience or inequity occasioned by permitting the claims to be refiled in state court where they will be afforded a surer-footed reading of applicable law.” (citation omitted)).

CONCLUSION

The defendants’ motions to dismiss are granted. The Clerk of Court is respectfully directed to enter judgment and close this action.

SO ORDERED.

ANN M. DONNELLY
United States District Judge

Dated: Brooklyn, New York
September 9, 2025

¹⁹ The plaintiff’s Thirty-Eighth Cause of Action is a claim for attorneys’ fees, but a “claim for attorney’s fees and costs is not actually a separate cause of action” but a potential form of relief. *Reliance Commc’ns LLC v. Retail Stores Ventures, Inc.*, No. 12-CV-2067, 2013 WL 4039378, at *1 n.3 (E.D.N.Y. Aug. 7, 2013); see also *Jaffe v. Capital One Bank*, No. 09-CV-4106, 2010 WL 691639, at *10 (S.D.N.Y. Mar. 1, 2010) (dismissing claim for attorneys’ fees because it is “not [a] claim[] upon which relief may be granted” but a “potential form[] of relief,” and therefore “cannot stand as [a] separate cause[] of action”).

Appendix C

***Amendment V of the Federal Constitution
provides, in relevant part:***

No person shall...be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

***Amendment XIV of the Federal Constitution
provides, in relevant part:***

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

***New York State Constitution, Article I, § 6
provides, in relevant part:***

In any trial in any court whatever the party accused shall be allowed to appear and defend in person and with counsel as in civil actions and shall be informed

of the nature and cause of the accusation and be confronted with the witnesses against him or her....

No person shall be deprived of life, liberty or property without due process of law.

Appendix D

18 U.S.C. § 1961(1) provides:

1961. Definitions

As used in this chapter—

(1) "racketeering activity" means (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891–894 (relating to extortionate credit transactions), section 932 (relating to straw purchasing), section 933 (relating to trafficking in firearms), section 1028 (relating to fraud and related activity in connection with identification documents), section 1029 (relating to fraud and related activity in connection with access devices), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1344 (relating to financial institution fraud), section 1351 (relating to fraud in foreign labor contracting),

section 1425 (relating to the procurement of citizenship or nationalization unlawfully), section 1426 (relating to the reproduction of naturalization or citizenship papers), section 1427 (relating to the sale of naturalization or citizenship papers), sections 1461–1465 (relating to obscene matter), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1512 (relating to tampering with a witness, victim, or an informant), section 1513 (relating to retaliating against a witness, victim, or an informant), section 1542 (relating to false statement in application and use of passport), section 1543 (relating to forgery or false use of passport), section 1544 (relating to misuse of passport), section 1546 (relating to fraud and misuse of visas, permits, and other documents), sections 1581–1592 (relating to peonage, slavery, and trafficking in persons)., sections 1831 and 1832 (relating to economic espionage and theft of trade secrets), section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955 (relating to the prohibition of illegal gambling businesses), section 1956 (relating to the laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), section 1958 (relating to use of interstate commerce facilities in the commission of murder-for-hire), section 1960 (relating to illegal money transmitters), sections 2251, 2251A, 2252, and 2260 (relating to sexual exploitation of children), sections 2312 and

2313 (relating to interstate transportation of stolen motor vehicles), sections 2314 and 2315 (relating to interstate transportation of stolen property), section 2318 (relating to trafficking in counterfeit labels for phonorecords, computer programs or computer program documentation or packaging and copies of motion pictures or other audiovisual works), section 2319 (relating to criminal infringement of a copyright), section 2319A (relating to unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances), section 2320 (relating to trafficking in goods or services bearing counterfeit marks), section 2321 (relating to trafficking in certain motor vehicles or motor vehicle parts), sections 2341–2346 (relating to trafficking in contraband cigarettes), sections 2421–24 (relating to white slave traffic), sections 175–178 (relating to biological weapons), sections 229–229F (relating to chemical weapons), section 831 (relating to nuclear materials), (C) any act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations) or section 501(c) (relating to embezzlement from union funds), (D) any offense involving fraud connected with a case under title 11 (except a case under section 157 of this title), fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), punishable under any law of the United States, (E) any act which is indictable under the Currency and Foreign Transactions Reporting Act, (F) any act which is indictable under the Immigration and Nationality Act, section 274 (relating to bringing in and

harboring certain aliens), section 277 (relating to aiding or assisting certain aliens to enter the United States), or section 278 (relating to importation of alien for immoral purpose) if the act indictable under such section of such Act was committed for the purpose of financial gain, or (G) any act that is indictable under any provision listed in section 2332b(g)(5)(B);

18 U.S.C. § 2721 provides:

§2721. Prohibition on release and use of certain personal information from State motor vehicle records

(a) In General.—A State department of motor vehicles, and any officer, employee, or contractor thereof, shall not knowingly disclose or otherwise make available to any person or entity:

(1) personal information, as defined in 18 U.S.C. 2725(3), about any individual obtained by the department in connection with a motor vehicle record, except as provided in subsection (b) of this section; or

(2) highly restricted personal information, as defined in 18 U.S.C. 2725(4), about any individual obtained by the department in connection with a motor vehicle record, without the express consent of the person to whom such information applies, except uses permitted in subsections (b)(1), (b)(4), (b)(6), and (b)(9): *Provided*, That subsection (a)(2) shall not in any way affect the use of organ donation information

on an individual's driver's license or affect the administration of organ donation initiatives in the States.

(b) Permissible Uses.—Personal information referred to in subsection (a) shall be disclosed for use in connection with matters of motor vehicle or driver safety and theft, motor vehicle emissions, motor vehicle product alterations, recalls, or advisories, performance monitoring of motor vehicles and dealers by motor vehicle manufacturers, and removal of non-owner records from the original owner records of motor vehicle manufacturers to carry out the purposes of titles I and IV of the Anti Car Theft Act of 1992, the Automobile Information Disclosure Act (15 U.S.C. 1231 et seq.), the Clean Air Act (42 U.S.C. 7401 et seq.), and chapters 301, 305, and 321–331 of title 49, and, subject to subsection (a)(2), may be disclosed as follows:

(1) For use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf of a Federal, State, or local agency in carrying out its functions.

(2) For use in connection with matters of motor vehicle or driver safety and theft; motor vehicle emissions; motor vehicle product alterations, recalls, or advisories; performance monitoring of motor vehicles, motor vehicle parts and dealers; motor vehicle market research activities, including survey research; and removal of non-owner records from the original owner records of motor vehicle manufacturers.

(3) For use in the normal course of business by a legitimate business or its agents, employees, or contractors, but only—

(A) to verify the accuracy of personal information submitted by the individual to the business or its agents, employees, or contractors; and

(B) if such information as so submitted is not correct or is no longer correct, to obtain the correct information, but only for the purposes of preventing fraud by, pursuing legal remedies against, or recovering on a debt or security interest against, the individual.

(4) For use in connection with any civil, criminal, administrative, or arbitral proceeding in any Federal, State, or local court or agency or before any self-regulatory body, including the service of process, investigation in anticipation of litigation, and the execution or enforcement of judgments and orders, or pursuant to an order of a Federal, State, or local court.

(5) For use in research activities, and for use in producing statistical reports, so long as the personal information is not published, redisclosed, or used to contact individuals.

(6) For use by any insurer or insurance support organization, or by a self-insured entity, or its agents, employees, or contractors, in connection with claims investigation activities, antifraud activities, rating or underwriting.

(7) For use in providing notice to the owners of towed or impounded vehicles.

(8) For use by any licensed private investigative agency or licensed security service for any purpose permitted under this subsection.

(9) For use by an employer or its agent or insurer to obtain or verify information relating to a holder of a commercial driver's license that is required under chapter 313 of title 49.

(10) For use in connection with the operation of private toll transportation facilities.

(11) For any other use in response to requests for individual motor vehicle records if the State has obtained the express consent of the person to whom such personal information pertains.

(12) For bulk distribution for surveys, marketing or solicitations if the State has obtained the express consent of the person to whom such personal information pertains.

(13) For use by any requester, if the requester demonstrates it has obtained the written consent of the individual to whom the information pertains.

(14) For any other use specifically authorized under the law of the State that holds the record, if such use is related to the operation of a motor vehicle or public safety.

18 U.S.C. § 2724 provides:**§2724. Civil action**

(a) Cause of Action.—A person who knowingly obtains, discloses or uses personal information, from a motor vehicle record, for a purpose not permitted under this chapter shall be liable to the individual to whom the information pertains, who may bring a civil action in a United States district court.

(b) Remedies.—The court may award—

(1) actual damages, but not less than liquidated damages in the amount of \$2,500;

(2) punitive damages upon proof of willful or reckless disregard of the law;

(3) reasonable attorneys' fees and other litigation costs reasonably incurred; and

(4) such other preliminary and equitable relief as the court determines to be appropriate.

28 U.S.C. § 1652 provides:**§1652. State laws as rules of decision**

The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the

courts of the United States, in cases where they apply.

Judiciary Act of 1789 § 34 provides:

And be it further enacted, That the laws of the several states, except where the constitution, treaties or statutes of the United States shall otherwise require or provide, shall be regarded as rules of decision in trials at common law in the courts of the United States in cases where they apply.

Appendix E

General Business Law § 70(1) provides:

The department of state shall have the power to issue licenses to private investigators. Nothing in this article shall prevent a private investigator licensed hereunder from performing the services of a watch, guard or patrol agency or bail enforcement agent as defined herein; however, a watch, guard or patrol agency or bail enforcement agent may not perform the services of a private investigator as defined herein.

General Business Law § 70(2) provides:

No person, firm, company, partnership, limited liability company or corporation shall engage in the business of private investigator or advertise his, their or its business to be that of private investigator notwithstanding the name or title used in describing such agency or notwithstanding the fact that other functions and services may also be performed for fee, hire or reward, without having first obtained from the department of state a license so to do, as hereinafter provided, for each bureau, agency, sub-agency, office and branch office to be owned, conducted, managed or maintained by such person, firm, company, partnership, limited liability company or corporation for the conduct of such business.

General Business Law § 70(4) provides:

Any person, firm, company, partnership or corporation who violates any provision of this section shall be guilty of a class A misdemeanor.

General Business Law § 71(1) provides in relevant part:

“Private investigator” shall mean and include the business of private investigator and shall also mean and include, separately or collectively, the making for hire, reward or for any consideration whatsoever, of any investigation, or investigations for the purpose of obtaining information with reference to any of the following matters, notwithstanding the fact that other functions and services may also be performed for fee, hire or reward; crime or wrongs done or threatened against the government of the United States of America or any state or territory of the United States of America... or the securing of evidence to be used before any authorized investigating committee, board of award, board of arbitration, or in the trial of civil or criminal cases.

General Municipal Law § 370(1) provides:

The legislative body of a city, village or town, may by ordinance or local law authorize the court having jurisdiction of traffic cases to establish a traffic violations bureau to assist the court in the

disposition of infractions in relation to traffic violations.

General Municipal Law § 370(2) provides:

There shall be a department of the Nassau county government known as the Nassau county traffic and parking violations agency, which shall operate under the direction and control of the county executive.

General Municipal Law § 370-a(1) provides:

Definitions. For the purpose of this article:

1. "Traffic and parking violations agency" shall mean a department of the Nassau county government established pursuant to subdivision two of section three hundred seventy of this article or a department in the Suffolk county government established pursuant to subdivision three of such section to administer and dispose of traffic and parking infractions.

General Municipal Law § 371(3) provides in relevant part:

A person charged with an infraction which shall be disposed of by either a traffic violations bureau, the Nassau county traffic and parking violations agency, or the Suffolk county traffic and parking violations agency may be permitted to answer, within a

specified time, at the traffic violations bureau, in Nassau county at the traffic and parking violations agency and in Suffolk county at the traffic and parking violations agency, either in person or by written power of attorney in such form as may be prescribed in the ordinance or local law creating the bureau or agency, by paying a prescribed fine and, in writing, waiving a hearing in court, pleading guilty to the charge or admitting liability as an owner for the violation of subdivision (d) of section eleven hundred eleven of the vehicle and traffic law, as the case may be, and authorizing the person in charge of the bureau or agency to enter such a plea or admission and accept payment of said fine...Such bureau or agency shall not be authorized to deprive a person of his right to counsel or to prevent him from exercising his right to appear in court to answer to, explain, or defend any charge of a violation of any traffic law, ordinance, rule or regulation.

Municipal Home Rule Law § 50(1) provides:

Legislative intent.

1. It is the intention of the legislature by this chapter to provide for carrying into effect provisions of article nine of the constitution and the statute of local governments and to enable local governments to adopt and amend local laws for the purpose of fully and completely exercising the powers granted to them under the terms and spirit of such article.

***Vehicle and Traffic Law § 1111-b(a)(1)
provides in relevant part:***

Notwithstanding any other provision of law, the county of Nassau is hereby authorized and empowered to adopt and amend a local law or ordinance establishing a demonstration program imposing monetary liability on the owner of a vehicle for failure of an operator thereof to comply with traffic-control indications in such county in accordance with the provisions of this section. Such demonstration program shall empower such county to install and operate traffic-control signal photo violation-monitoring devices at no more than one hundred intersections within and under the jurisdiction of such county at any one time.

***Vehicle and Traffic Law § 1111-b(d)
provides in relevant part:***

A certificate, sworn to or affirmed by a technician employed by Nassau county in which the charged violation occurred, or a facsimile thereof, based upon inspection of photographs, microphotographs, videotape or other recorded images produced by a traffic-control signal photo violation-monitoring system, shall be prima facie evidence of the facts contained therein. Any photographs, microphotographs, videotape or other recorded images evidencing such a violation shall be available for inspection in any proceeding to adjudicate the liability for such violation pursuant to a local law or ordinance adopted pursuant to this section.

***Vehicle and Traffic Law § 1111-b(g)(4)
provides in relevant part:***

The notice of liability shall be prepared and mailed by Nassau county or by any other entity authorized by such county to prepare and mail such notification of violation.

Vehicle and Traffic Law § 1690(2) provides:

In the discharge of this responsibility, the judicial hearing officer shall have the same powers as a judge of the court in which the proceeding is pending. The rules of evidence and reasonable doubt burden of proof shall be applicable at a trial conducted by a judicial hearing officer.

***The Guide to New York Evidence Rule 9.13
provides in relevant part:***

(1) A photograph may be admitted in evidence upon a showing that it is relevant and properly identified and authenticated as a fair and accurate representation of what it purportedly depicts. Depending upon the circumstances, a photograph taken from a social media account may require an additional showing of a connection between the defendant and the social media account and the timing of the photograph's posting in relation to the event or reason for the photograph's admission in evidence.

The Guide to New York Evidence Rule 9.14 provides:

(1) In general.

A video recording of a scene, person or persons, or an occurrence is admissible in the discretion of a trial judge provided it is shown to be relevant to an issue in the proceeding and is properly authenticated.

(2) Authentication.

(a) A video recording may be authenticated by any of the following:

(i) the testimony of a witness to the recorded events, or of an operator or installer or maintainer of the equipment, that the video accurately represents the subject matter depicted;

(ii) the testimony, expert or otherwise, that a video truly and accurately represents what was before the camera;

(iii) the testimony of a witness and other evidence that demonstrates that the video accurately represents the subject matter depicted.

(b) Evidence establishing the chain of custody of the video may buttress its authenticity and integrity and even allow for acceptable inferences of its reasonable accuracy and freedom from tampering.

Appendix F

***Miscellaneous Laws of Nassau County,
Title 72 § 1(a) provides:***

Notwithstanding any other provision of law, Nassau County is hereby authorized and empowered to establish a demonstration program imposing monetary liability on the owner of a vehicle for failure of an operator thereof to comply with traffic-control indications in accordance with the provisions of this title. The Department of Public Works, for purposes of implementation of such program, shall be authorized to install traffic-control signal photo violation-monitoring devices and to operate such devices at no more than one hundred intersections within and under the jurisdiction of the County at any one time.

***Miscellaneous Laws of Nassau County,
Title 72 § 3(b) provides:***

A certificate, sworn to or affirmed by a technician employed by Nassau County, or a facsimile thereof, based upon inspection of photographs, microphotographs, videotape or other recorded images produced by a traffic-control signal photo violation-monitoring system, shall be prima facie evidence of the facts contained therein. Any photographs, microphotographs, videotape or other recorded images evidencing such a violation shall be available for inspection in any proceeding to

adjudicate the liability for such violation imposed pursuant to this title.

***Miscellaneous Laws of Nassau County,
Title 72 § 3(d) provides:***

If an owner receives a notice of liability pursuant to this title for any time period during which the vehicle was reported to the police department as having been stolen, it shall be a valid defense to an allegation of liability for a violation of subdivision (d) of section eleven hundred eleven of the Vehicle and Traffic Law pursuant to this title that the vehicle had been reported to the police as stolen prior to the time the violation occurred and had not been recovered by such time. For purposes of asserting the defense provided by this subdivision it shall be sufficient that a certified copy of the police report on the stolen vehicle be sent by first class mail to the Nassau County Traffic and Parking Violations Agency, as the branch of the District Court of Nassau County that shall adjudicate liability of owners pursuant to section six of this title.

***Miscellaneous Laws of Nassau County,
Title 72 § 4(a) provides:***

An owner liable for a violation of subdivision (d) of section eleven hundred eleven of the Vehicle and Traffic Law pursuant to this title shall be liable for a fine in the amount of fifty dollars for each violation. An additional penalty of twenty-five dollars for each violation shall be imposed for the failure to respond

to a notice of liability within forty-two days after the mailing of the notice of liability.

***Miscellaneous Laws of Nassau County,
Title 72 § 5(d) provides:***

The notice of liability shall be prepared and mailed by the Nassau County Traffic and Parking Violations Agency or its designee.

Nassau County Administrative Code § 8-33.0 provides:

Public Safety Fee.

There shall be a Public Safety Fee for the purpose of promoting and protecting the safety and well-being of the residents and visitors to the County, including but not limited to traffic safety, policing security and anti-terrorism activities and by deterring illegal and reckless driving. The fee shall be collected in like manner as administration fees collected by the Traffic and Parking Violations Agency, but shall not be collected from tickets issued for infractions of parking laws, ordinances, rules, and regulations. The amount of said fee shall be set by ordinance.

(Added by Local Law No. 9-2016, in effect January 2, 2017.)

Nassau County Administrative Code § 24-1.1 provides:

Nassau County Traffic and Parking Violations Agency established.

Subject to the provisions of section 24-1.0 of this title and article fourteen-B of the General Municipal Law, there shall be a department of the Nassau County government known as the Nassau County Traffic and Parking Violations Agency, which shall operate under the control and direction of the County Executive to assist the Nassau County District Court in the disposition and administration of infractions of traffic and parking laws, ordinances, rules and regulations, and the adjudication of liability of owners for violations of subdivision (d) of section 1111 of the Vehicle and Traffic Law in accordance with section 1111-b of such law and the liability of owners for violations of subdivision (a) of section 1174 of such law in accordance with section 1174-a of such law, except that said agency shall not have jurisdiction over those matters which are specifically excluded by section 371 (2) of the General Municipal Law.

(Amended by Local Law No. 5-1992. in effect April 16, 1992; amended by L. 2002, Ch. 527; amended by local law 12-2009, signed by the County Executive on June 8, 2009; amended by local law 19-2019, signed by the County Executive on October 23, 2019.)

***Nassau County Ordinance 186-2010
provides:***

AN ORDINANCE RELATING TO CERTAIN ADMINISTRATIVE FEES TO BE CHARGED BY THE TRAFFIC AND PARKING VIOLATIONS AGENCY AND DETERMINING THAT ACTION RELATING TO SUCH FEES IS A TYPE II ACTION PURSUANT TO SECTION 617.5©(20) OF TITLE 6 OF THE NEW YORK STATE CODE OF RULES AND REGULATIONS AND WITHIN THE MEANING OF SECTION 8-109(2) OF THE NEW YORK ENVIRONMENTAL CONSERVATION LAW

WHEREAS, section 370 of the General Municipal Law establishes the Nassau County Traffic and Parking Violations Agency (TPVA) as a department of the Nassau County government, to operate under the direction and control if the County Executive; and

WHEREAS, pursuant to sections 10[1][ii][9-a] of the Municipal Home Rule Law, County of Nassau has the power to adopt and amend local laws relating to fixing, levy, collection, and administration of charges, rates and fees; and

WHEREAS, it would be more efficient and equitable to impose such costs, through administrative fees, on the motorists or vehicle owners that directly benefit from the provisions of such services; and

WHEREAS, the legislature hereby finds and determines that action relating to such fee increases constitutes a Type II action pursuant to Title 6 of the New York Code of Rules and Regulations Section 617.5(c)(20) (“routine or continuing agency administration and management, not including new programs or major reordering of priorities that may affect the environment”) and within the meaning of Section 8-0109(2) of the New York Environmental Conservation Law; now, therefore,

BE IT ORDAINED by the County Legislature of Nassau as follows:

Section 1. The following administrative fees are authorized and fixed as follows:

Fee Name	Description	Fees (in dollars)
TPVA Court Cost Fee	All tickets and notices of liability where there is a final disposition other than not guilty	\$15.00

§ 2. A separate administrative fee shall be imposed for each applicable ticket or notice of violation with regard to which a fee is imposed under this ordinance or Ordinance 62-08, regardless of whether or not they arise out of a single incident or more than one incident.

§ 3. Section 2 of Ordinance 62-08 is hereby **REPEALED**

§ 4. This ordinance shall take effect immediately.

***Nassau County Ordinance 190-2012
provides:***

AN ORDINANCE AMENDING ORDINANCE 16-2011 IN RELATION TO INCREASING THE FEE CHARGED BY THE TRAFFIC AND PARKING VIOLATIONS AGENCY FOR A FINAL DISPOSITION OTHER THAN NOT GUILTY

WHEREAS, section 370 of the General Municipal Law establishes the Nassau county traffic and parking violations agency [sic] (“TPVA”) as a department of [sic] Nassau county government, to operate under the direction and control of the county executive; and

WHEREAS, pursuant to section 10[1][ii][9-a] of the Municipal Home Rule Law, the County of Nassau has the power to adopt and amend local laws relating to the fixing, levy, collection, and administration of charges, rates, and fees; and

WHEREAS, the current fee charged to motorists appearing before TPVA whose cases have been adjudicated to a final disposition other than not guilty is currently below the actual cost of adjudicating those cases; and

WHEREAS, it would be more efficient and equitable to impose the additional cost on motorists whose cases result in a final disposition other than not guilty; now, therefore,

BE IT ORDAINED by the County Legislature of the County of Nassau as follows:

§ 1. Ordinance 16-2011 is hereby amended to read as follows:

FEE NAME	FEE (in dollars)
FINAL DISPOSITION OTHER THAN NOT GUILTY FEE ("DRIVER RESPONSIBILITY FEE")	20.00
INITIAL DEFERRED PAYMENT FEE	15.00
SUBSEQUENT DEFERRED PAYMENT FE—PER DEFERRAL – PER TICKET	10.00

§ 2. It is hereby determined, pursuant to rge State Environmental Quality Review Act, 8 N.Y.E.C.L. section 0101 et seq. and its implementing regulations, Part 617 of 6 N.Y.C.R.R., and Section 1611 of the County Givernment Law of Nassau County, that the adoption of this Ordinance is a "Type II" Action within the meaning of Section 617.5(c)(20), and, accordingly, is of a class of actions

which do not have a significant effect on the environment; and no further review is required.

§ 3. This ordinance shall take effect immediately.

Appendix G

**STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL**

ATTORNEY GENERAL OPINION	No. I16-002 (R16-003)
By	Re: Are third party contractors who operate photo enforcement systems required to be licensed as private investigators under A.R.S. § 32-2401(16)
MARK BRNOVICH ATTORNEY GENERAL	
March 16, 2016	

To: Sonny Borrelli
Arizona State Representative

Questions Presented

“Are third-party contractors who operate photo enforcement systems required to be licensed as private investigators under Arizona Revised Statute § 32-2401(16), either under subsection (a)(i) because they engage in the business of making an investigation for the purpose of obtaining information with reference to a crime or wrong done against the state, or under subsection (b) because

they secure evidence to be used in the trial of civil or criminal cases and the preparation therefor?”

Summary Answer

Third-party contractors who operate photo enforcement systems in Arizona are subject to the private investigator licensing requirements in Arizona Revised Statute (“A.R.S.”) §§ 32-2401 to -2462. In so concluding, this Opinion overrules Arizona Attorney General Opinion No. I10-001, which is to the contrary.

Background

Arizona’s statutes permitting municipalities to use photo enforcement systems are set forth in A.R.S. §§ 28-1201 to -1206. Under these statutes, a “photo enforcement system” is defined as:

[A] device substantially consisting of a radar unit or sensor linked to a camera or other recording device that produces one or more photographs, microphotographs, videotapes or digital or other recorded images of a vehicle’s license plate for the purpose of identifying violators of articles 3 and 6 of this chapter.

A.R.S. §§ 28-601(14), -1201. As recounted in the request for this Opinion, a photo enforcement system “is not necessarily operated by law enforcement officers. In at least some instances it is operated by third party contractors who furnish the digitally

recorded information to the municipality. In turn, the municipality uses the information as the evidentiary foundation for traffic citations.”

Arizona’s statutes governing the licensing of private investigators are set forth in A.R.S. §§ 32-2401 to -2462. Under these statutes, it is a class 1 misdemeanor for a person knowingly to act as a private investigator unless the person is registered as a private investigator and is acting within the scope of the person’s employment for an agency that is licensed to conduct the business of private investigations in the State. A.R.S. § 32-2411. A “private investigator” is defined in A.R.S. § 32-2401(16), which provides in part:

“Private investigator” means a person other than an insurance adjuster or an on-duty peace officer as defined in § 1-215 who, for any consideration, engages in business or accepts employment to:

(a) Furnish, agree to make or make any investigation for the purpose of obtaining information with reference to:

(i) Crime or wrongs done or threatened against the United States or any state or territory of the United States.

...

(b) Secure evidence to be used before investigating committees or boards of award or arbitration or in the trial of civil or criminal cases and the preparation therefor.

The private investigator licensing statutes specifically exempt eleven categories of persons from its licensing requirements. *See* A.R.S. § 32-2409(1)–(11). For example, government employees, consumer reporting agencies, practicing attorneys, collection agencies, insurance adjusters, news media, and private process servers, among others, may not be required to register as a private investigator. *Id.* Photo enforcement system contractors, however, are not identified in the list of persons exempted from the private investigator licensing requirements. *See id.*

Analysis

Principles of statutory interpretation guide our analysis into whether third-party contractors who operate photo enforcement systems in Arizona are subject to the private investigator licensing requirements in A.R.S. §§ 32-2401 to -2462. “Our task in interpreting the meaning of a statute is to fulfill the intent of the legislature that wrote it.” *State v. Williams*, 175 Ariz. 98, 100 (1993). “In determining the legislature’s intent, we initially look to the language of the statute itself.” *Bilke v. State*, 206 Ariz. 462, 464 ¶ 11 (2003). “If the language is clear, [we] must apply it without resorting to other methods of statutory interpretation, unless application of the plain meaning would lead to impossible or absurd results.” *Id.* (internal quotations and citation omitted).

A. The Plain Language of the Statute

A third party which contracts to operate a photo enforcement system in the State clearly falls within the definition of “private investigator” under A.R.S. § 32-2401(16)(b). By definition, persons who contract to operate a photo enforcement system engage in a business to “[s]ecure evidence to be used . . . in the trial of civil or criminal cases and the preparation therefor.” *Id.* Again, a “photo enforcement system” is a device which captures certain information, expressly “for the purpose of identifying violators of articles 3 and 6 of this chapter.” A.R.S. §§ 28-601(14), -1201. Articles 3 and 6 of the relevant chapter concern various traffic violations, including violations for running a red light and exceeding the posted speed limit, which may give rise to civil or criminal penalties. *See* A.R.S. §§ 28-641 to -28-654 (Article 3 concerning various traffic violations); A.R.S. §§ 28-701 to -710 (Article 6 concerning speed restrictions).

Under any fair reading of the statute, collecting information “for the purpose of identifying violators of” traffic laws constitutes securing “evidence to be used . . . in the trial of civil or criminal cases and the preparation therefor.” Because persons who contract to operate a photo enforcement system in the State clearly fall within the plain meaning of A.R.S. § 32-2401(16)(b), this Opinion does not address whether such contractors separately qualify as private investigators under A.R.S. § 32-2401(16)(a)(i).

**B. The Expressio Unius Est Exclusio
Alterius Canon of Statutory
Construction**

This interpretation—that photo enforcement system contractors must comply with private investigator licensing laws—is also reinforced by the fact that photo enforcement system contractors are not exempted from Arizona’s private investigator licensing requirements. See A.R.S. § 32-2409. “A well established rule of statutory construction provides that the expression of one or more items of a class indicates an intent to exclude all items of the same class which are not expressed.” *Pima County v. Heinfeld*, 134 Ariz. 133, 134 (1982). Applying this rule here, the expression of eleven separate categories of exemptions from the private investigator licensing requirements implies an intent not to exempt other persons, including photo enforcement system contractors. See *id.* (“[T]he expression of specific exceptions to the confidentiality requirement of § 38–431.03(B) for some persons implies an intent not to except other persons, including the Auditor General.”).

C. Arizona Attorney General Opinion No. I10-001

Despite the plain language of the licensing statute, Arizona Attorney General Opinion No. I10-001 concluded that “[a] vendor contracting with the Department of Public Safety (‘DPS’) to provide a state-photo enforcement system is not required to meet the private investigator licensing requirements of Title 32, Chapter 24.” In reaching this conclusion, Opinion No. I10-001 did not engage in any analysis of the language of the statute itself.

Instead, Opinion No. I10-001 simply jumped to the “purpose” of regulating private investigators, as articulated in *Landi v. Arkules*, 172 Ariz. 126, 135 (App. 1992). In *Landi*, the Arizona court of appeals held that the defendants, who contracted to provide heir locating services, were required to be licensed as private investigators. *Id.* at 134. Because they were not properly licensed, the court also refused to enforce the defendants’ contract to perform heir locating services. *Id.* at 135. The court reasoned that doing so would violate the public policy behind Arizona’s private investigator licensing requirements, which policy was to protect “the public from unscrupulous and unqualified investigators.” *Id.* at 135. From this public policy, Opinion No. I10-001 reasoned:

Unlike in *Landi*, which involved a private service which any member of the public may hire, a photo-enforcement system vendor does not provide a private service and is not available to the public to hire. Issuing traffic citations is a state function, and the Legislature enacted A.R.S. § 41-1722 allowing the vendor to issue citations on behalf of the state. Under the statutes governing photo enforcement, the regulation and oversight through the contracting process with DPS protects the public, separate and apart from the private investigator licensing statutes.

This analysis is flawed. The plain language of a statute may not be disregarded “unless application of the plain meaning would lead to impossible or absurd results.” *Bilke*, 206 Ariz. at 464 ¶ 11. Applying the plain language of A.R.S. § 32-2401(16) to require photo enforcement system contractors to comply with private investigator licensing requirements hardly leads to “impossible or absurd results.” Arizona’s basic private investigator licensing laws certainly would not make it “impossible” for photo enforcement system contractors to qualify for a private investigator agency license or for employees of such contractors who are engaged in private investigator activities to register as a private investigator employee. *See, e.g.*, A.R.S. §§ 32-2422 (applicant for an agency license must, among other things, be at least 21 years of age, must be a citizen or legal resident of the United States authorized to seek employment in the United States, must not have been convicted of or indicted for certain criminal conduct, and have at least three years of investigative experience), -2423 (agency license application, fee, surety bond, and worker’s compensation proof), -2441 (applicant for employee registration must, among other things, be at least 18 years of age, must be a citizen or legal resident of the United States authorized to seek employment in the United States, and must not have been convicted of or indicted for certain criminal conduct), -2442 (employee registration application and fee), -2460 (registration not required for employees who do not engage in private investigator services).

There is also nothing inherently “absurd” about requiring licensing compliance from private

investigators that perform public functions that are subject to a government contracting process. To be sure, public protection was a purpose of the Arizona legislature in enacting licensing requirements for private investigators. But the statute itself reflects a judgment by the legislature, not only about the desirability of protecting the public, but also about how best to protect the public when persons engage in private investigator activities. *Cf. Crawford v. Washington*, 541 U.S. 36, 61 (2004) (“The [Confrontation] Clause thus reflects a judgment, not only about the desirability of reliable evidence (a point on which there could be little dissent), but about how reliability can best be determined.”) (Scalia, J.). The method for assessing whether the public is protected set forth in Opinion No. I10-001—namely, whether the government is involved in the contracting process—may not replace the method for protecting the public from unscrupulous and unqualified private investigators prescribed by the legislature.

Conclusion

Third-party contractors who operate photo enforcement systems in Arizona are subject to the private investigator licensing requirements in A.R.S. §§ 32-2401 to -2462. This conclusion is compelled by the plain language of A.R.S. § 32-2401(16)(b). For this reason, this Opinion overrules Arizona Attorney General Opinion No. I10-001, which was not based on and is contrary to the text of Arizona’s licensing statutes.

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