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LIFE, LIBERTY, AND THE PURSUIT OF ARTIFICIAL INTELLIGENCE

*Christopher C. Spinosa Jr.**

ABSTRACT

With governmental use of artificial intelligence (“AI”) becoming more prevalent, Americans are at risk of being subjected to the factual and legal findings of ill-equipped AI systems. The possibility of an AI takeover of the judicial branch is an undesirable reality to some individuals who are challenging laws and government programs which utilize AI systems to enforce traffic code violations. This Article considers the procedural fairness, privacy rights, and effectiveness of the various uses of AI systems in traffic code enforcement. By undertaking a thorough review of New York case law, this Article also analyzes the treatment of AI systems in different modes of traffic code enforcement. Based on the current trend of the United States Supreme Court to consult the views of the Founding Fathers on controversial matters of nationwide importance, this Article further considers the ethical, moral, and legal aspects of having an AI-controlled adjudicator as understood by the constitutional framers. Ultimately, this Article concludes by finding that the New York school bus stop-arm camera safety program (Vehicle Traffic Law (“VTL”) § 1174-a) is constitutional and passes muster under rational basis review, and that the framers would not likely endorse the prevalent use of AI within the judicial branch.

*Editor-in-Chief, *Touro Law Review*; B.S., State University of New York, at Albany; J.D. Candidate, Touro University Jacob D. Fuchsberg Law Center. I would like to thank *LexisAI* and *ChatGPT* for providing me with valuable research assistance, and *Grammarly*’s generative AI features for editorial support. I also thank Professor Gabriel Weil and the *Law & Artificial Intelligence* course for our spirited and interesting discussions. Many thanks to Professor Rena Sepowitz and the *Touro Law Review* for their editorial prowess. The goal of this paper is to address recent developments with the government use of AI systems that impact the daily lives of New York residents.

I. INTRODUCTION

In November of 2023, a group of disgruntled Long Island residents filed a putative class action against the Town of Hempstead seeking to challenge the constitutionality of its school bus camera safety program.¹ The particular program launched in the Town of Hempstead, located in Nassau County, New York successfully managed to issue 140,456 violations in 2023 and accumulated \$17 million in revenue since the program's inception.² Many residents expressed frustration over the automated ticketing because in their opinion it seems to be more about generating revenue than the safety of the children.³ Interestingly, one report found that “the highest concentration of tickets issued” are on wide and highly congested roads—some of which have four lanes, high speed limits, and are separated by a median or highway divider.⁴ Opponents claim that the law is misaligned because it awards substantial profit to a private enterprise (45% of fines collected) while undermining public safety because of the increased risk

¹ See generally Complaint, Sergey Kadinsky et al. v. Town of Hempstead, Case No. 619279/2023 Doc. No. 2 (Sup. Ct. Nassau Cnty. 2023) [hereinafter Complaint, *Kadinsky*]; Candice Ferrette, *Hempstead Town School Bus Camera Revenues hit \$13 Million in 2023*, NEWSDAY (May 15, 2024), <https://www.newsday.com/long-island/politics/bus-camera-hempstead-nassau-suffolk-slt6rek4>; Carolyn Gusoff, *Drivers File Class Action Lawsuit Against Town of Hempstead Over School Bus Safety Camera Tickets*, CBS NEWS NEW YORK (Jan. 15, 2024), <https://www.cbsnews.com/newyork/news/drivers-file-class-action-lawsuit-against-town-of-hempstead-over-school-bus-safety-camera-tickets/>.

² Gusoff, *supra* note 1.

³ *Id.*; see also Ferrette, *supra* note 1 (stating that “fewer than 1% of citations” are challenged by drivers).

⁴ Michael Gormley et al., *Ruling Didn't Negate School Bus Camera Tickets, Experts Say; Suffolk Tosses 8,000 Contested Ones*, NEWSDAY (June 19, 2024), <https://www.newsday.com/news/region-state/school-bus-cameras-buspatrol-suffolk-qposvmrc>; see also Mark Harrington & Sandra Peddie, *Suffolk Audit: Nearly \$13M in School Bus Camera Tickets Went Uncollected*, NEWSDAY (June 20, 2024), <https://www.newsday.com/news/region-state/school-bus-cameras-suffolk-bus-patrol-gbw2wpuy> (stating that a high volume of tickets were issued in locations without statutorily required warning signs “on the top 25 major roadways in nonresidential areas where motorists are ‘traveling at a significant rate of speed in moderate to heavy traffic’”). There is currently a bill pending in the New York State Senate Transportation Committee which would amend the statute to remove liability with respect to divided highways and medians. See 2023 Bill Text NY S.B. 8329 (Jan. 18, 2024).

of being rear-ended by other drivers stopping for buses where there is a minimal or no threat to children presented under the circumstances.⁵

In 2019, the New York State Legislature enacted Vehicle Traffic Law (“VTL”) § 1174-a, which authorizes school bus camera safety programs to “catch drivers who unlawfully pass a stopped school bus and [to] ensure the safety of New York’s students.”⁶ According to lawmakers, automated school bus stop-arm enforcement is needed to effectively control such violations and deter motorists.⁷ This in turn will contribute to student safety and allow police officers to prioritize tasks of greater importance.⁸ The program equips school buses with state-of-the-art “safety cameras, DVR [digital video recorder] and storage devices, internal cameras, GPS [global positioning system], telemetry and LTE [long-term evolution] connectivity.”⁹ The company that administers the program in Nassau and Suffolk counties is called BusPatrol.¹⁰

A multi-lens camera records the license plates of a vehicle that illegally passes a school bus when its stop-arm is deployed, in addition to time and location data, which are stored on a local DVR hard drive.¹¹ Once the data transmits to BusPatrol’s cloud, its “artificial intelligence (AI) software filters all footage received from each bus before it goes” to a safety specialist, employed by BusPatrol, for review.¹² The

⁵ First Amended Complaint, Sergey Kadinsky et al. v. Town of Hempstead, Case No. 619279/2023, Doc. No. 18, at 20 (Sup. Ct. Nassau Cnty. 2023) (“[T]he current system incentivizes the new and continued use of bus stops on highways and other highly trafficked areas. . . . undermin[ing] public health and safety by causing traffic to come to an abrupt stop, especially because school buses frequently deploy their stop-arms without providing sufficient notice.”) [hereinafter First Amended Complaint, *Kadinsky*]; Gormley et al., *supra* note 4; Chanteé Lans, *Suffolk County Dismisses Almost All Backlogged School Bus Camera Tickets After Court Ruling*, ABC7 EYEWITNESS NEWS (June 21, 2024), <https://abc7ny.com/post/suffolk-county-school-bus-camera-tickets-almost-dismissed/14981798/> (quoting a Long Island resident who witnessed more than one school bus-related accident, most recently in which “a young lady stopped because of a school bus and a Mustang didn’t realize she was stopping, slammed the brakes on [sic] and plowed right in the back of her”).

⁶ *Suffolk County School Bus Safety Program*, SUFFOLKCOUNTYNY.GOV (last visited Mar. 16, 2024), <https://www.suffolkcountyny.gov/schoolbus>.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ Gusoff, *supra* note 1.

¹¹ *Suffolk County School Bus Safety Program*, *supra* note 6.

¹² *Id.*

specialist then reviews the footage to determine whether the footage presents an offense, and if so, prepares an evidentiary package that is submitted to law enforcement containing: “video footage, license plate number, make, model, driver information, GPS location, and a timestamp of the incident.”¹³ Subsequently law enforcement personnel may give approval and mail a ticket to the motorist.¹⁴

In late 2023, the Appellate Term reversed a judgment imposing a civil fine of \$250 for an alleged violation of VTL § 1174-a.¹⁵ In *People v. Croce (Alfred)*,¹⁶ the defendant failed to stop for a school bus and was captured by the BusPatrol system.¹⁷ The traffic prosecutor admitted a technician’s affirmation into evidence, which certified the violation and the camera footage.¹⁸ The Appellate Term held that the prosecution did not meet its burden of proof because no witnesses could establish that the bus conformed with the relevant regulations pertaining to: (1) colored flashing signal lamps on the front and rear of the bus; and (2) two signs conspicuously displayed on the exterior of the bus with the words “SCHOOL BUS” painted in black with a background painted in “national school bus chrome” that is readable from two-hundred feet away.¹⁹ The Appellate Term further reasoned that there was no statutory presumption that the bus was properly equipped and no proof the bus was stopped “for the purpose of receiving or discharging any passengers”—prerequisites to establishing liability under § 1174-a.²⁰

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *People v. Croce (Alfred)*, 201 N.Y.S.3d 595, 597, 2023 N.Y. Misc. LEXIS 23160, at *2 (Sup. Ct. App. Term 2d Dep’t, Nov. 30, 2023), *superseded by statute*, 2023 Bill Text NY S.B. 8306, 2024 N.Y. Laws Chap. 56 (effective Apr. 20, 2024). The Appellate Term is a lower appellate court within the First and Second Judicial Departments of the New York State Supreme Court, Appellate Division, which has “jurisdiction over appeals from civil and criminal cases originating in District, City, Town and Village Courts, as well as non-felony appeals from the County Court.” *Lower Appellate Courts*, NYCOURTS.GOV, <https://www.nycourts.gov/courts/low-erappeals.shtml>.

¹⁶ 201 N.Y.S.3d 595, *superseded by statute*, 2023 Bill Text NY S.B. 8306, 2024 N.Y. Laws Chap. 56 (effective Apr. 20, 2024).

¹⁷ *Id.* at 596-97.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at 597.

However, despite the court’s ruling, the Legislature amended the law in April 2024 to include a presumption that the bus is statutorily compliant and is presumed to be either picking up or dropping off children at the time of the recorded incident.²¹ The amendment was made directly in response to the *Croce (Alfred)* decision—no longer requiring traffic prosecutors to establish those elements.²² It is important to note that the amendment does not operate retroactively or invalidate previously issued citations, and defendants still have the opportunity to rebut the presumption under the circumstances.²³ Notwithstanding the Legislative response to the *Croce (Alfred)* decision, many evidentiary concerns remain, along with considerations of due process with respect to red-light camera tickets.²⁴

The court in *Matter of Jensen v. Department of Finance*²⁵ determined that the petitioner was deprived of his due process rights because of the government’s failure to produce a “photograph expert” who was “knowledgeable about petitioner’s case and about how these traffic cameras work.”²⁶ The court reasoned that the VTL does not permit the issuance of tickets by simply sending a stack of “documents, images and videos *instead of a person to an in-person hearing.*”²⁷ Such evidence alone “cannot be cross-examined” and does “not have

²¹ 2023 Bill Text NY S.B. 8306, 2024 N.Y. Laws Chap. 56 (effective Apr. 20, 2024); Harrington & Peddie, *supra* note 4; Gormley et al., *supra* note 4.

²² Harrington & Peddie, *supra* note 4; Gormley et al., *supra* note 4.

²³ Gormley et al., *supra* note 4.

²⁴ See generally *Matter of Jensen v. Dep’t of Finance*, 75 N.Y.S.3d 876 (Sup. Ct. N.Y. Cnty. 2018) (stating that “due process requires an opportunity to confront and cross-examine adverse witnesses,” and provide an “opportunity to be heard at a meaningful time and in a meaningful manner”). Red-light traffic cameras similarly use AI to automatically detect the status of the light “by using an embedded image analysis technology.” *Red-Light Traffic Cameras*, TATTLE, <https://www.tattle.com/red-light-traffic-cameras/>. Once the light turns red, it enters “violation mode” and creates a virtual line on the road surface. *Id.* Upon violation, the automatic license plate recognition (ALPR) camera records the license plate. *Id.* Interestingly, Suffolk County’s red light program is currently scheduled to end on December 1, 2024 after the state legislature failed to extend a bill for its renewal. Scott Eidler, *Suffolk County Red Light Camera Program to End; Lawmakers Trade Blame*, NEWSDAY (June 12, 2024), <https://www.newsday.com/long-island/politics/red-light-camera-suffolk-r5921xkk>. In 2023, there were 357,732 red light camera tickets issued—which generated the county \$8 million in revenue. *Id.*

²⁵ 75 N.Y.S.3d 876.

²⁶ *Id.* at 879.

²⁷ *Id.* at 878 (emphasis in original).

a demeanor for the trier of fact to evaluate.”²⁸ The petitioner was not only deprived of the opportunity to poke holes in the government’s proof, but it also created the appearance that the administrative law judge (ALJ) was not truly a neutral party because “the ALJ [was] the only person in the room to ask questions or cross-examine petitioner about the incident.”²⁹

The aforementioned scenario presents a situation where an AI system is essentially the decisionmaker or adjudicator since the ALJ surrenders all factfinding and defers his/her judgment to the recorded footage alone. Consequently, the ALJ does not exercise independent judgment—rather, the ALJ almost always irrefutably accepts the evidence presented by the AI system. Except for rare occasions, the ALJ does not make credibility determinations or contest the government’s production of evidence. There is an argument to be made that this deprives alleged traffic offenders a meaningful opportunity to be heard.

An AI system acting as a jurist may be problematic. Professor Harry Surden noted that AI systems perform poorly in situations that are conceptual, policy-driven, open-ended, judgment-oriented, or require common sense or intuition.³⁰ Additionally, AI systems are ineffective at handling the art of persuasion or other concepts such as societal norms, constructs, or institutions.³¹ This suggests that Americans are at risk of becoming subjected to the factual and legal findings of an AI system that is ill-equipped to explore concepts of reasonableness, subjectiveness, goodwill, and public policy.³² However, some judges already use AI systems to make sentencing or bail determinations.³³ It is also used by police to predict the location and time of future crime attempts and to identify suspects by scanning images of crowds with facial recognition technology.³⁴

This Article considers the procedural fairness, privacy rights, and overall effectiveness of the various uses of AI systems in traffic code enforcement. It explores the treatment of AI systems in different modes of traffic code enforcement and considers the ethical and moral

²⁸ *Id.*

²⁹ *Id.* at 878-79.

³⁰ Harry Surden, *Artificial Intelligence and Law: An Overview*, 35 GA. ST. U.L. REV. 1305, 1322 (2019).

³¹ *Id.* at 1323.

³² *See id.* at 1326.

³³ *Id.* at 1332-33.

³⁴ *Id.* at 1333-34.

aspects of having an AI-controlled adjudicator. Specifically, Part II of this Article analyzes the Kadinsky class action against the Town of Hempstead and argues that the school bus stop-arm camera program be upheld. Part III of this Article examines the potential risks of having an AI serve as both factfinder and adjudicator, and studies the views of the Founding Fathers in relation to the assistance of AI in judicial decision-making. The current trend of the United States Supreme Court is to consult the views of the constitutional framers on hotly-contested issues and other matters of widespread public debate—especially when the Due Process Clause of the Fourteenth Amendment is concerned.³⁵ Part IV concludes that New York’s school bus camera program is constitutional and that § 1174-a does not deprive alleged violators of any fundamental rights. Furthermore, the Founding Fathers would be against the use of AI assistance in judicial decision-making due to their fervent beliefs in an independent judiciary that is uninfluenced by majoritarian views or input from the public.

³⁵ See, e.g., *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022) (stating that historical inquiries are essential whenever asked to recognize a new constitutionally protected liberty interest, and such right must be deeply rooted in our Nation’s history and tradition, and be fundamental to the concept of ordered liberty) (no right to abortion); see also *New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 25 (2022) (deciding to consult the views of the framers at the time of the founding in order to conform with how the Court assesses “many other constitutional claims”) (Second Amendment); *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2428 (deciding to focus its Establishment Clause inquiry on the “historical practices and understandings” of the Founding Fathers) (First Amendment). It should be noted that the *Dobbs* decision, which involved substantive due process, inquired as to the views of lawmakers at the time the Fourteenth Amendment was ratified in 1868. See, e.g., *Dobbs*, 597 U.S. 247-49. Since Part III of this paper discusses Article III of the U.S. Constitution, the views of the Founding Fathers appear to be most helpful in determining whether the judicial assistance of AI systems is fundamental to our concept of ordered liberty. For context, the seven Articles of the U.S. Constitution were ratified in late 1788. AKHIL REED AMAR, *THE WORDS THAT MADE US: AMERICA’S CONSTITUTIONAL CONVENTION, 1760-1840* (2021), at 182. Legislators created Article III to “map[] out a new standing federal judiciary, which likewise was given considerable independence from Congress—life tenure and guaranteed salary. The new judges would rule on federal law, including the law of the Constitution itself, and enjoy appellate authority over state courts that could hear federal-law cases in the first instance, but would not be the last word.” *Id.* at 184. Of course, the judicial branch did not properly come to life until Congress passed the Judiciary Act of 1789. *Id.* at 280.

II. RESIDENTS BRING TOWN OF HEMPSTEAD TO COURT

Sergey Kadinsky, on behalf of himself and others similarly situated, commenced a putative class action in November 2023 against the Town of Hempstead to recover declaratory and injunctive relief, and damages.³⁶ This class action appears to be inspired by the recent *Croce (Alfred)* case decided by a panel of three judges in the Appellate Term, Second Department.³⁷ Indeed, since the *Croce (Alfred)* case, groups of appellate judges within the Second Department held in two separate cases that the camera recordings and other evidence produced by BusPatrol and traffic prosecutors did not substantially comply with the elements necessary to establish liability under VTL § 1174-a.³⁸ Prior to the April 2024 amendments,³⁹ the government was required to prove that defendant violated VTL § 1174 “by not stopping for a stopped school bus marked and equipped as provided in [VTL] § 375 (20) and (21-c).”⁴⁰ Among other things, school buses must have front and rear color flashing signal lamps, along with two signs displaying the words “SCHOOL BUS” with the background color “national school bus chrome.”⁴¹ Additionally, there must be: exterior reflective markings; front crossing arms; safety sensors; back-up beepers, a second stop-arm (in some instances); and a “sign, placard or other display

³⁶ See generally First Amended Complaint, *Kadinsky*, *supra* note 5; see also *supra* text accompanying notes 1-5.

³⁷ See generally First Amended Complaint, *Kadinsky*, *supra* note 5; see also *supra* notes 15-20 and accompanying text (describing the Appellate Term’s holding in *Croce (Alfred)* that the government failed to meet its burden of proof to establish a violation of § 1174-a).

³⁸ See generally *People v. Schwartz (Mitchell)*, 202 N.Y.S.3d 664 (Sup. Ct. App. Term 2d Dep’t, Dec. 21, 2023); and *People v. Seidenberg*, 204 N.Y.S.3d 712 (Sup. Ct. App. Term 2d Dep’t, Feb. 8, 2024); see also *supra* text accompanying notes 15-20 (discussing the *Croce (Alfred)* case).

³⁹ See *supra* notes 21-24 and accompanying text.

⁴⁰ *People v. Croce (Alfred)*, 201 N.Y.S.3d 595, 596-97 (Sup. Ct. App. Term 2d Dep’t, Nov. 30, 2023), *superseded by statute*, 2023 Bill Text NY S.B. 8306, 2024 N.Y. Laws Chap. 56 (effective Apr. 20, 2024); see also *People v. Epstein*, 164 Misc. 2d 957, 958 (Cty. Ct. N.Y., White Plains, Apr. 10, 1995) (“Although the defendant is here charged with a traffic infraction, not a crime, the People must, nevertheless, prove each and every element of the violation.”); *id.* at 959 (“The court will not infer the purpose for which the school bus was stopped from the sole fact that it had its red signal lights in operation.”).

⁴¹ VEH. & TRAF. L. § 375 (20)(a)-(b)(1).

... giving notice to approaching motor vehicle operators that school bus photo violation monitoring systems are in use.”⁴²

Plaintiffs in the Kadinsky lawsuit assert several causes of action, including: (1) unlawful delegation of executive and prosecutorial authority; (2) federal and state due process violations; (3) denial of equal protection under the law; (4) fraudulent concealment/inducement and negligent misrepresentation; (5) violation of the Excessive Fines clause under the New York Constitution; and (6) unjust enrichment.⁴³ According to Kadinsky himself, the goal of this action “is not to see the law repealed but fixed to fulfill its safety goals.”⁴⁴

Pursuant to § 1174-a, a notice of liability (“NOL”) shall be sent “to each person alleged to be liable” for overtaking and passing a school bus in violation of § 1174, where the vehicle operator had express or implied permission from the vehicle owner.⁴⁵ According to plaintiffs, the NOLs issued to them are statutorily deficient because they lack “affirmative evidence that a bus had stopped for the purpose of receiving or discharging passengers, and that it had appropriate markings and appropriate equipment.”⁴⁶ Additionally, they argue that the sworn certificates⁴⁷ by BusPatrol technicians which are included with the NOLs are knowingly false and misleading because BusPatrol’s recorded footage is not sufficient to conclude that a violation of § 1174 occurred.⁴⁸ For instance, the technicians do not review footage showing that the school bus is statutorily compliant or that students

⁴² *Id.* § 375 (21).

⁴³ First Amended Complaint, *Kadinsky*, *supra* note 5, at 25-36.

⁴⁴ Gusoff, *supra* note 1.

⁴⁵ VEH. & TRAF. L. § 1174-a (b), (g)(1).

⁴⁶ First Amended Complaint, *Kadinsky*, *supra* note 5, at 2.

⁴⁷ “A certificate, sworn to or affirmed by a technician employed by the county city, town or village in which the charged violation occurred, or a facsimile thereof, based upon inspection of photographs, microphotographs, videotape or other recorded images produced by a school bus 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.” VEH. & TRAF. L. § 1174-a (d) (emphasis added).

⁴⁸ First Amended Complaint, *Kadinsky*, *supra* note 5, at 3; *see also id.* at 16 (“The form Technician’s Certificate is false and misleading because the photographic evidence reviewed by the technicians supports only the conclusion that one of the elements necessary to establish liability under VTL § 1174-a was met, but not all such elements.”).

are entering or exiting the bus during the time of the alleged violation.⁴⁹ Thus, when the sworn certificates and evidentiary packages are submitted to the Town for approval, any resulting NOLs issued are “unsupported, ineffective and unlawful.”⁵⁰ It is also claimed that the footage “is not made available at the hearing for review and inspection” and is not entered into evidence.⁵¹

Plaintiffs particularly take issue regarding the fee structure of the school bus camera safety program. In exchange for BusPatrol’s identification of violations and compilation of evidentiary packages, the company receives 45% of the revenue generated from the NOLs.⁵² In Suffolk County alone, almost \$37 million was collected in total from May to December 2022, and \$21 million in 2023.⁵³ It is argued that the government’s purported goal to promote the public health and safety is undermined by BusPatrol’s financial interest and is counterintuitive since, often times, school buses allegedly deploy their stop-arms without sufficient notice to on-coming vehicles which causes them to suddenly stop.⁵⁴ Regarding equal protection, they claim certain individuals are held accountable under § 1174-a requiring the government only to prove a single element; meanwhile the same conduct is deemed unlawful under § 1174 requiring the government to prove the existence of multiple elements.⁵⁵

⁴⁹ *Id.* at 12.

⁵⁰ *Id.* at 13.

⁵¹ *Id.* at 4; *see also id.* at 18-19 (“The video and pictures referenced in the Technician’s Certificate are not presented to the Court or marked into evidence. They are not ‘available for inspection in [the] proceeding.’ VTL § 1174-a. Instead, [BusPatrol] makes available the video and pictures available to the Judicial Hearing Officer through a computer feed. The videos are not made part of the record of proceedings, are not entered into evidence, and are not available on appeal. If the Court wishes to access the videos, it must request access from [BusPatrol].”). However, this contention is contradicted by the fact that the NOL contains images of the vehicle allegedly passing the school bus with its stop-arm deployed. *See* Exhibit B, NOL, *Kadinsky*, *supra* note 5, Doc. No. 13.

⁵² First Amended Complaint, *Kadinsky*, *supra* note 5, at 2.

⁵³ Mark Harrington et al., *Bus patrol Brings Extensive Political Connections to School Bus Program*, NEWSDAY (May 25, 2024), <https://www.newsday.com/long-island/suffolk/buspatrol-cameras-vui3vpvq>.

⁵⁴ *Id.* at 20.

⁵⁵ *Id.* at 27; *see also id.* at 6 (citing *People v. Robinson*, 39 Misc. 3d 128(A) (N.Y. Sup. Ct. App. Term 2d Dep’t 2013) (finding police officer’s testimony that defendant ran a school bus stop-arm while red warning lights were activated was insufficient to prove violation of § 1174 absent evidence that the school bus was statutorily

Although the Town has not yet filed an answer to the complaint, the Town asserts that plaintiffs' argument is fundamentally flawed and their asserted claims are all nearly identical to each other.⁵⁶ Plaintiffs' contention that the NOL must contain all necessary evidence to sustain a traffic violation conviction under § 1174 is erroneous, according to the Town, since § 1174-a specifically states that violating the school bus camera safety program is not a conviction; it merely imposes civil liability.⁵⁷ Therefore, traffic prosecutors need not prove all of the substantive requirements for a violation under § 1174 because it requires a different standard.⁵⁸ It is well-established that civil matters require a lower level of due process protection than criminal matters.⁵⁹ Moreover, the Town cited instances where courts have repeatedly upheld the constitutionality of the state's analogous red light program.⁶⁰

A. Other Similar Challenges & Previous Failed Class Action Attempts

Residents across New York have made similar arguments against the use of AI systems in adjudicating traffic violations and there has been mixed success. For example, in the Capital Region, one Colonie town judge dismissed "all of the bus ticket trials on his docket" in early March 2024—before the law was amended the following month.⁶¹ The cases were dismissed because the traffic prosecutor lacked proof "that students were loading or unloading during the filmed incident."⁶² To remedy the deficiency, BusPatrol has stated that

compliant); then citing *People v. Brooks*, 38 Misc. 3d 946, 948 (N.Y. Just. Ct. 2013) (dismissing accusatory instrument for failure to provide evidence that the school bus was stopped for the purpose of discharging or receiving students).

⁵⁶ Memorandum of Law in Support of Motion to Dismiss, *Kadinsky*, *supra* note 5, Doc. 14, at 12.

⁵⁷ *Id.* at 6-7.

⁵⁸ *Id.* at 9.

⁵⁹ *Id.* at 17-18 (citing *Halberstam v. New York City*, No. 654239, slip op., at *6 (Sup. Ct. N.Y. Cnty. Dec. 9, 2014); then citing *Mathews v. Eldridge*, 424 U.S. 319 (1976)).

⁶⁰ *Id.* at 18-19.

⁶¹ Kathleen Moore, *New York Appellate Division Rules Against School Bus Cameras*, TIMES UNION (Mar. 8, 2024), <https://www.timesunion.com/education/article/new-york-appellate-division-rules-school-bus-18746250.php>.

⁶² *Id.*

it will now prepare an “enhanced evidence package” which includes additional video showing that “the vehicle involved is actually a school bus, and that the bus was stopped for the purpose of discharging and receiving passengers.”⁶³ However, the video cannot show students entering or exiting the bus because when the law was enacted, the Legislature “specifically banned any images of students, on the grounds that those images should not be sent to strangers accused of driving around a bus.”⁶⁴

Most recently in June 2024, Suffolk County dismissed nearly 9,000 school bus camera tickets that were all issued prior to the April 2024 amendments.⁶⁵ After the *Croce (Alfred)* case was decided, the county suspended all hearings for school bus camera tickets—but in light of the amendments, the county decided to dismiss them and forgo collecting the \$2 million owed.⁶⁶ To ensure statutory compliance in the future, the county will now include additional levels in its review process of the school bus camera tickets.⁶⁷ Previously, only two individuals reviewed the camera footage prior to issuing a ticket: one by BusPatrol and one by the county.⁶⁸ Moving forward, there will now be a supervisor who is responsible for approving the issuance of a ticket after the initial two completed their review, and if contested, then the footage will be reviewed by a county traffic attorney.⁶⁹

It should also be noted that another putative class action has been filed against BusPatrol in the Manhattan Supreme Court.⁷⁰ The gravamen of this similar class action echoes the facts of the Kadinsky class action and asserts roughly the same causes of action related to unjust enrichment, fraudulent concealment/inducement, and negligent

⁶³ *Id.* These changes have already gone into effect. *Id.* It appears that at this time, the sufficiency of proof presented by these enhanced evidence packages has not been challenged in the courts. However, based on the Colonie town judge’s findings, some courts may be tempted to require footage demonstrating “specific proof about the specific instance involved in the ticket” and not merely generalized images or documentation proving these additional statutory requirements. *Id.*

⁶⁴ *Id.*

⁶⁵ Lans, *supra* note 5.

⁶⁶ Gormley et al., *supra* note 4; *see also* Lans, *supra* note 5.

⁶⁷ Gormley et al., *supra* note 4.

⁶⁸ Gormley et al., *supra* note 4; *see also supra* notes 11-14.

⁶⁹ Gormley et al., *supra* note 4.

⁷⁰ Complaint, *Morgulis v. Bus Patrol America, LLC*, Case No. 655887/2023 Doc. No. 2 (Sup. Ct. N.Y. Cnty.).

misrepresentation.⁷¹ The case has been removed from state court to the Southern District of New York and is pending BusPatrol’s motion to dismiss.⁷²

1. *School Speed Zone Traffic Ticket Program*

In contrast to the various Appellate Term, Second Department school bus stop-arm camera program rulings, a different approach was taken by the Appellate Division, First Department in *Matter of Serby v. New York City*.⁷³ In *Matter of Serby*, the court determined that due process was not deprived to a defendant who was accused of speeding in a school speed zone based upon speed camera footage and a technician’s sworn certificate.⁷⁴ The five-judge panel unanimously found that the ALJ’s finding was properly supported by substantial evidence when it was determined that the defendant violated VTL § 1180-b by exceeding the maximum speed limit in a school zone.⁷⁵ Procedural due process was not violated because the defendant had “an opportunity to be heard in a meaningful manner at a meaningful time,” and was “permitted to testify, call witnesses, and present documentary evidence” to support his defense.⁷⁶ Indeed, the court recognized that under VTL § 240(2)(c),⁷⁷ the rules of evidence did not apply to the administrative hearing, and the “technician’s certificate and camera’s daily set-up logs were valid and admissible without corroborating testimony from their signatories or expert analysis.”⁷⁸

⁷¹ *Id.*

⁷² *See generally* Morgulis v. Bus Patrol America, LLC, 1:24-cv-0013 (S.D.N.Y. Jan. 5, 2024).

⁷³ 185 N.Y.S.3d 660 (App. Div. 1st Dep’t 2023); *see also* In re Kuza v. New York City Dep’t of Fin., 181 N.Y.S.3d 61 (App. Div. 1st Dep’t 2022) (rejecting defendant’s arguments that the NOL was deficient and holding that the sworn technician’s certificate constituted prima facie evidence that defendant exceeded the maximum speed limit by more than 10 mph).

⁷⁴ *Id.* at 660.

⁷⁵ *Id.*

⁷⁶ *Id.* at 661.

⁷⁷ VEH. & TRAF. L. § 240 (2)(c) (“The hearing examiner shall not be bound by the rules of evidence in the conduct of the hearing, except the rules relating to privileged communications.”).

⁷⁸ *In re Serby*, 185 N.Y.S.3d at 661. Interestingly, there is no evidence of a camera set-up log with respect to the school bus stop-arm camera program.

According to the First Department, the technician’s sworn certificate constituted “prima facie evidence” of the defendant’s violation, which the defense failed to rebut.⁷⁹ Similarly, VTL § 1174-a mirrors this language by stating that the technician’s sworn certificate based upon school bus stop-arm camera footage is “prima facie evidence of the facts contained therein.”⁸⁰ Moreover, like the school bus camera program, speed camera violations also constitute civil penalties and not criminal convictions.⁸¹ Consequently, the court found that the Sixth Amendment right to confrontation, Seventh Amendment right to jury trial, and other criminal procedure constitutional protections were not applicable.⁸²

Based on the same reasoning, the Manhattan Supreme Court recently dismissed a putative class action against New York City in *Matter of Palma v. New York City*⁸³ challenging its school speed zone program. In *Matter of Palma*, plaintiffs attempted to argue that the City’s NOLs were unlawful, defective, and legally insufficient because they did not contain evidence that “there were [statutorily compliant signs with] posted speed limits in the school speed zones” along with a proper warning to motorists that the “photo speed violation monitoring system” was in use at the time of the alleged violation.⁸⁴ The court rejected this argument based on the Appellate Division’s ruling in *Matter of Serby*⁸⁵ and held:

Here, the court grants [the City’s] motion to dismiss . . . as the court finds that the challenged NOLs are facially sufficient and that they include sufficient evidence to support the allegations. . . . VTL § 1180-b(d) does not require additional evidence of posted speed limit

⁷⁹ *Id.* at 660.

⁸⁰ Compare VEH. & TRAF. L. § 1180-b(d) (“A certificate, sworn to or affirmed by a technician employed by the city of New York, or a facsimile thereof, based upon inspection of photographs, microphotographs, videotape or other recorded images produced by a photo speed violation monitoring system, shall be prima facie evidence of the facts contained therein.”) (emphasis added), with VEH. & TRAF. L. § 1174-a (d), *supra* note 47.

⁸¹ *In re Serby*, 185 N.Y.S.3d at 661.

⁸² *Id.*

⁸³ No. 152138, slip op., 2023 N.Y. Misc. LEXIS 8968 (Sup. Ct. N.Y. Cnty. Oct. 12, 2023).

⁸⁴ *Id.* at *2-3.

⁸⁵ *Id.* at *7-8.

signage, nor a photograph of the sign. As set forth above, VTL § 1180-b(d) states that the technician's certificate is prima facie evidence of the facts contained in the certificate. Therefore, the court finds that the sworn technician certificates are sufficient to establish prima facie evidence of a violation of the school speed zone speed limit as a matter of law.⁸⁶

Due to the similar statutory construction of both VTL § 1174-a and § 1180-b, the court's reasoning in *Matter of Palma* may be logically extended to the Kadinsky class action against the Town of Hempstead. The Nassau County Supreme Court should consider these similarities when deciding the Town's motion to dismiss. Despite the fact that the *Croce (Alfred)* decision has been nullified through legislation and the decisions by the Manhattan Supreme Court in *Matter of Palma* and First Department in *Matter of Serby* are persuasive authority,⁸⁷ the Nassau County Supreme Court should find that the BusPatrol technician's sworn certificate need not contain additional evidence regarding the school buses' markings nor images of children entering or exiting the bus. Rather, the class action should be dismissed and the technician's sworn certificate should be sufficient to establish a violation of

⁸⁶ *Id.* at *8-9.

⁸⁷ First, the Appellate Term's decision is persuasive because that court does not have binding authority over the Nassau County Supreme Court, where the Kadinsky class action was filed. See *About the Court: An Overview of the Appellate Terms*, NYCOURTS.GOV, https://www.nycourts.gov/courts/ad2/appellateterm_aboutthecourt.shtml; see also *Court System Outline*, NYCOURTS.GOV, <https://www.nycourts.gov/ctapps/outline.htm>; *Stare Decisis*, CORNELL L. SCH., https://www.law.cornell.edu/wex/stare_decisis. The same reasoning applies to the Manhattan Supreme Court. The First Department's decision is also persuasive authority because it is unclear whether the doctrine of stare decisis controls in this instance—as the school bus camera program case presents a closely related but not identical legal issue. As such, since the Nassau County Supreme Court is located within the Second Department, the court may accept the decision as persuasive authority with respect to the school bus stop-arm camera program but is free to reach a contrary result. See *Mountain View Coach Lines, Inc. v. Storms*, 102 A.D.2d 663, 664 (N.Y. App. Div. 2d Dep't 1984) (“[T]he doctrine of *stare decisis* requires trial courts in this department to follow precedents set by the Appellate Division of another department until the Court of Appeals or this court pronounces a contrary rule.”). A careful search reveals there are no cases from the Second Department or Court of Appeals contemplating due process concerns with the school speed zone program and speed camera footage as evidence (nor the school bus stop-arm camera program for that matter).

§ 1174-a as a matter of law, just as under § 1180-b. Regardless, it seems that BusPatrol has already decided to include additional evidence in an attempt to remedy these procedural concerns.⁸⁸ It is questionable whether these enhanced evidence packages prepared by BusPatrol and contained within the NOLs moving forward will be upheld in court, and it is further yet to be seen how the April 2024 amendments to § 1174-a will affect the Kadinsky class action.

2. *Red-light & Traffic Camera Tickets*

Eleven years ago, a Monroe County Supreme Court Justice dismissed a plaintiff's challenge to Rochester's red-light camera program in *Krieger v. Rochester*.⁸⁹ In *Krieger*, the plaintiff received a NOL in the mail issuing him a \$50 fine for failure "to properly stop at a red light for a right-hand turn" based on camera footage.⁹⁰ He pleaded not guilty on the basis that the footage was inaccurate.⁹¹ When the ALJ found him guilty after watching the video of the incident, he commenced an action against the City of Rochester claiming that the red-light camera program and VTL § 1111-b were unconstitutional.⁹² The plaintiff, Krieger, made similar arguments against the red-light camera program that the Kadinsky plaintiffs are now making against the school bus stop-arm camera program. Specifically, Krieger primarily asserted that: (1) § 1111-b is unconstitutional on its face because red-light infractions are not a serious problem and the cameras do not make the streets any safer; and (2) that his substantive and procedural due process rights were violated because of the quasi-criminal nature of the penalty imposed and "that the administrative process is essentially a sham and any defenses are meaningless."⁹³

⁸⁸ See *supra* notes 61-64 and accompanying text.

⁸⁹ 978 N.Y.S.2d 588 (Sup. Ct. Monroe Cnty. 2013).

⁹⁰ *Id.* at 592.

⁹¹ *Id.*; see also *supra* note 24 and accompanying text.

⁹² *Id.* VTL § 1111-b "imposes liability for a red light infraction." VEH. & TRAF. L. § 1111-b. Furthermore, it similarly provides that "A sworn or affirmed certificate by a city technician based upon the inspection of the red light camera footage is *prima facie* evidence of a violation, and the footage is available online for viewing by the recipient of a notice and is further retained for inspection in any proceeding to adjudicate the liability for an alleged infraction." See *id.* § 1111-b (d). Such violations are adjudicated by an administrative traffic bureau, and any finding of liability is not deemed a conviction. See *id.* § 1111-b (f), (h).

⁹³ *Krieger*, 978 N.Y.S.2d at 592-93.

The court held that the red-light program and § 1111-b were constitutional because, clearly, the legislature adopted the law for a legitimate purpose and there is a rational relationship between the objective and means to achieve that objective.⁹⁴ Legitimate government goals often promote the health, safety, morals, and general welfare of its residents.⁹⁵ To support the red-light program, the sponsor support memorandum for § 1111-b that was presented to the New York State Assembly demonstrated that disregarding red lights is the foremost cause of urban traffic accidents, constituting nearly half of all accidents according to the Insurance Institute for Highway Safety (IIHS).⁹⁶ The court also recognized that the City provided affidavits from the mayor, corporation counsel, engineers, and police officials, “attesting to the public safety objective of the program.”⁹⁷ Another legitimate concern that persuaded the court was “the further benefit of preserving previous law enforcement resources through automation of traffic infraction oversight”⁹⁸ The traffic cameras reduce law enforcement costs and increase detection of minor traffic infractions.⁹⁹

Regardless of Krieger’s argument that the red-light cameras are ineffective, the court stated that such contention “is irrelevant and cannot be used to retroactively invalidate the legislative intent.”¹⁰⁰ Furthermore, the court suggested that Krieger’s concerns are “more appropriately a lobbying consideration against extending the laws past” their expiration dates.¹⁰¹ The court also rejected Krieger’s economic

⁹⁴ *Id.* at 594.

⁹⁵ *Id.*

⁹⁶ *Id.* at 596. Additionally, red-light related traffic incidents are associated with a \$7 billion impact on the national economy. *Id.* “Given the toll that motor vehicle crashes exact upon individuals, families, and society, this bill provides the City of Rochester with authorization to establish a red light camera demonstration program aimed at reducing intersection crashes caused by red light violations within the City.” *Id.* (citing Sponsor’s Mem., Bill Jacket, Leg. 2009, ch. 22, at 6) (emphasis in original).

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.* at 597. “The soundness of legislative intent must be assessed against the facts known at the time the legislative body acted, not as they presently stand.” *Id.*

¹⁰¹ *Id.*

argument, and found that the mere “side effect of generating money” for the City did not make the laws unconstitutional.¹⁰²

Lastly, the court rejected Krieger’s due process arguments, and found that § 1111-b “is entirely civil in nature” and the clear legislative intent and statutory scheme demonstrate the laws are not a criminal enforcement mechanism.¹⁰³ Given that civil matters require less due process protection than criminal matters, the court did not find a violation of Krieger’s due process rights.¹⁰⁴ The court reasoned that: (1) any activity that occurs “on a public street [is] not [automatically] cloaked in constitutional privacy rights”; (2) “the risk of erroneously depriving the plaintiff of his private interest is nominal” since he had notice and an opportunity to be heard, which are sufficient procedural safeguards for a minor traffic infraction; and (3) the government “has a strong interest in securing public safety, as well as in maintaining efficient means of addressing traffic infractions.”¹⁰⁵ Interestingly, the court noted that the “additional fiscal and administrative burdens of requiring a live witness to attest to the functioning of the red light cameras in each and every case would undermine one of the original goals of saving sparse governmental resources.”¹⁰⁶

With respect to the Kadinsky class action, although the complaint does not contest the facial constitutional validity of § 1174-a, plaintiffs do attack the government’s goals and objectives when the school bus stop-arm program was implemented.¹⁰⁷ According to the support memorandum employed by the legislature, the purpose of §

¹⁰² *Id.* (citing *Idris v. Chicago*, 552 F.3d 564 (7th Cir. 2009); then citing *DeVita v. District of Columbia*, 74 A.3d 714 (D.C. 2013)).

¹⁰³ *Id.* at 598-99. The court elaborated:

Vehicle and Traffic Law offenses are generally classified as violations, misdemeanors, or felonies and are commenced by the filing of an accusatory instrument in a criminal court. (*See* CPL 1.20 [1], [16]-[18].) A finding of guilty in a criminal court equates to a conviction for that offense and exposes the offender to possible jail time. (*See* Vehicle and Traffic Law § 1800.) Here, there is no formal criminal prosecution as Vehicle and Traffic Law § 1111-b (f) does not allow for a conviction exposing the offender to potential jail time. (*See also* Vehicle and Traffic Law § 155.)

Id.

¹⁰⁴ *Id.* at 601.

¹⁰⁵ *Id.* at 601-02.

¹⁰⁶ *Id.* at 602.

¹⁰⁷ *See supra* notes 52-55 and accompanying text.

1174-a was to “authorize the installation and use of safety cameras on school buses for the purpose of monitoring overtaking and passing of school bus violations.”¹⁰⁸ A survey/study from 2013 showed that 306 illegal passes were reported by the 236 school bus driver participants, where 6 of the passes were on the passenger-door side of the bus.¹⁰⁹ The survey thus showed that there was an average of 1.28 illegal passes per school bus, and when extrapolated across the state “would bring the estimated number of illegal passes . . . to over 64,000 on that date alone.”¹¹⁰ This falls in line with other studies which estimated that over 50,000 drivers illegally overtake school buses with their stop-arms deployed.¹¹¹ Ultimately, the legislature expressed that the school bus safety cameras are “necessary to prevent the casualties from dangerous motorists who ignore current law. The school bus safety act will increase enforcement of laws already on the books and will significantly lessen the numbers of violations that continue to compromise the safety of our students.”¹¹²

The justification for § 1174-a demonstrates that the legislature properly investigated its concerns about student and school bus safety prior to enacting the statute. Indeed, a BusPatrol spokesman recently commented that the program aims to positively change driver behavior to remedy careless or distracted driving that harms children traveling between school and their homes.¹¹³ Therefore, the court in the Kadinsky class action should find that § 1174-a is rationally related to a legitimate government objective. Notwithstanding the Town’s permissible objective to implement the school bus stop-arm program to ensure the safety of students and increase the number of detected offenses, the Town should also be free to prioritize its law enforcement needs on more serious matters and reduce policing costs. Based on the findings in *Krieger*, the Nassau County Supreme Court may find that

¹⁰⁸ Sponsor’s Mem., Bill Jacket, Leg. 2015, No. A1520C, https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A01520&term=2015&Summary=Y&Actions=Y&Committee%26nbspVotes=Y&Floor%26nbspVotes=Y&Memo=Y&Text=Y.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ Ferrette, *supra* note 1.

the revenue-generating secondary effect of the stop-arm program with BusPatrol does not affect the constitutionality of § 1174-a.

Contrary to the Monroe County Supreme Court's finding that Krieger was not deprived of his due process rights when there was no live witness to testify about his alleged violation,¹¹⁴ the Manhattan Supreme Court in *Jensen* held the opposite and found that the traffic bureau was required to "produce a live person to speak about [the government's] evidence and to submit to cross-examination."¹¹⁵ The judge in *Jensen* stated that there is no reason why the technician who signed the sworn statement cannot attend the hearing to support the issuance of "each particular ticket."¹¹⁶ Furthermore, despite the fact that the sworn certificate constitutes prima facie evidence of the violation, the judge reasoned:

But the rules and laws cited by [the government] do not necessarily permit the agency issuing the ticket to simply send a stack of documents, images and videos instead of a person to an in-person hearing. Documents cannot be cross-examined. Documents do not have a demeanor for the trier of fact to evaluate. Documents cannot correct themselves if there is a misrepresentation or answer any questions.

Not having a person testify leaves the ALJ, who is tasked with making findings of fact and evaluating the credibility of the witnesses, to evaluate [the agency's] evidence on its own without anyone to offer context or answer objections raised by petitioner. And because there is no live witness testifying in support of respondent, the ALJ is the only person in the room to ask questions or to cross-examine petitioner about the incident. How can the ALJ make credibility findings when only one side is present? How can petitioner poke holes in [the government's] proof when there are only documents? How can petitioner argue with documents that the ALJ has already deemed unquestionable? Without

¹¹⁴ See *supra* notes 105-106 and accompanying text.

¹¹⁵ *Matter of Jensen v. Dep't of Finance*, 75 N.Y.S.3d 876, 879 (Sup. Ct. N.Y. Cnty. 2018); see also *supra* notes 24-29 and accompanying text (discussing *Jensen*).

¹¹⁶ *Id.*

a doubt, the appearance is that the ALJ is on the agency's side and the alleged offender has no meaningful opportunity to contest the ticket because the ALJ acts as both the trier of fact and as the prosecutor. That the agency does not even bother to have a live witness, that the ALJ cross-examines the petitioner for the agency and no one cross-examines the agency constitutes a lack of due process.¹¹⁷

As succinctly stated by the court in *Krieger*, it would be a grave mistake to require a live person testify for each and every violation of these minor traffic infractions because it would undermine the legislature's legitimate goal of saving sparse governmental resources.¹¹⁸ Accordingly, that logic suffices to explain why the technician cannot attend the in-person hearing. The Kadinsky plaintiffs were not deprived of due process because they received notice and a meaningful opportunity to be heard within the context of a purely civil enforcement action. The conclusion that such alleged traffic violators are not entitled to heightened due process protection is supported by the fact that being ticketed by an AI camera system does not substantially intrude one's privacy or liberty interests. As eloquently put by the court in *Krieger*:

[T]he red light camera program is less invasive than the traditional policing methods which involve a much more substantial interference with one's privacy and liberty interests. In a traditional traffic stop by a police officer, the officer will generally request from the driver proof of registration and insurance, and often inquires of the driver whether the driver knows why the officer stopped him or her and whether the driver is in a hurry, as well as other possible inquiries. Said stops also provide the officer with an opportunity to view into the vehicle for items and contents in plain sight. The City's red light camera program avoids all of this interference; thus, this court finds the program to be much less intrusive.¹¹⁹

¹¹⁷ *Id.* at 878-79 (emphasis in original).

¹¹⁸ *See supra* note 106 and accompanying text.

¹¹⁹ *Id.* at 604 (internal citations omitted).

Naturally, an ordinary traffic stop by a police officer could result in the search of a vehicle and lead to the deprivation of a fundamental right or substantive due process.¹²⁰ However, since the issuance of a traffic citation by AI is significantly less intrusive and does not risk violating any currently recognized fundamental rights, the Kadinsky plaintiffs should not be entitled to more stringent due process protections.

3. *No Constitutional Right to Counsel for Traffic Infractions*

It is well-established in New York that individuals are not entitled to an assignment of counsel for traffic infraction cases.¹²¹ The reasoning from the New York State Court of Appeals in *People v. Letterio*¹²² is instructive regarding due process protections afforded to defendants and provides additional support for the contention that municipalities should be free to enforce the VTL through the use of AI camera systems in a manner that does not impede its objectives at reducing expenses and saving time. The Court found that neither the state nor federal constitutions require the right to counsel to extend to all crimes.¹²³ The Court elaborated:

There are, historically, certain minor transgressions which admit of summary disposition. New York has long deemed traffic infractions as a form of misconduct distinguishable from more serious breaches of the law or crimes. While not controlling, we believe that this time-honored distinction supports our conclusion that a traffic court need but assure the defendant a fair forum in which to be heard. *As a practical matter, the traffic court Judge often sits as prosecutor, defense counsel, and Judge.* Neither this triune function, nor the failure of a traffic court Judge to advise the defendant that he may have counsel, is so unfair as to require the result urged by the dissenters.¹²⁴

¹²⁰ See generally *Brendlin v. California*, 551 U.S. 249 (2007).

¹²¹ See generally *People v. Letterio*, 16 N.Y.2d 307 (1965).

¹²² *Id.*

¹²³ *Id.* at 311.

¹²⁴ *Id.* at 312 (internal citations omitted and emphasis added).

This language suggests that it is not unreasonable for an ALJ to rely solely on documentary or recorded footage in the absence of live-witness testimony at a hearing because the adjudicator is expected to hold this “triune function.” In other words, the Court implied that, as a practical matter, the appearance that the ALJ is on the agency’s side is not unfair within this context. The Court’s decision contradicts the Manhattan Supreme Court’s reasoning in *Jensen* that the traffic bureau must present a witness to testify regarding the specific violation at hand in order to answer potential objections raised by defendants during the hearing.¹²⁵ Thus, given that the Court of Appeals previously held it is not unfair for traffic court ALJs to serve as both the trier of fact and pseudo-prosecutor, it does not appear that plaintiffs in school bus stop-arm camera cases would prevail on the ground that their due process rights were violated for the lack of a neutral magistrate.

III. THE POTENTIAL FOR AI JUDGES

The discrepancy in the rulings between the *Jensen* and *Letterio* cases presents a puzzling scenario where a traffic court ALJ can defer all fact and legal findings to the evidence compiled by an AI camera system. Based on the aforementioned case law, such reliance would not deprive the defendant of due process or any other fundamental right. However, is it sound policy to allow ALJs to give up their adjudicatory powers and leave decision-making in the hands of AI?

Professor Harry Surden explained that AI systems struggle to perform well in policy-driven, open-ended, or judgment-oriented situations.¹²⁶ Such systems have trouble exercising common sense or intuition as well, and are ineffective at comprehending persuasive techniques, societal norms/constructs.¹²⁷ It would not be wise for our society to allow AI systems to supplant judicial decision-making in all respects—especially in instances requiring concepts such as reasonableness, subjectiveness, goodwill, and public policy.¹²⁸ Professor Surden suggests that a main contemporary issue faced by the use of AI systems in the judiciary is “the potential for bias in algorithmic decision-making.”¹²⁹ When AI is used “to make important decisions that

¹²⁵ See *supra* note 117 and accompanying text.

¹²⁶ Surden, *supra* note 30, at 1322.

¹²⁷ *Id.* at 1323.

¹²⁸ *Id.* at 1326.

¹²⁹ *Id.* at 1335.

affect people's lives or liberties (e.g., criminal sentencing), it is important to determine whether the underlying computer models are treating people fairly and equally."¹³⁰ Another important consideration is that AI systems should be "explainable, interpretable, or at least transparent" when engaged in legal decision-making.¹³¹ There is also the concern that when judges use AI systems to adjudicate cases, such decisions "may disproportionately appear to be more neutral, objective, and accurate than they actually are" and that judges are susceptible for deferring to false precision.¹³²

The more prevalent use of AI systems in judicial decision-making can threaten the independence of the judiciary by clouding the judicial thought process. As the current majority of justices on the United States Supreme Court adhere to the views of the founding fathers,¹³³ it is relevant to consider some of their beliefs regarding Article III of the U.S. Constitution. The framers cared deeply "about who would serve on the judiciary."¹³⁴ The founding generation was haunted by the corruption of the English judiciary, and popular dissatisfaction in the colonies "grew into a movement toward an elected judiciary."¹³⁵ The framers recognized "a need to protect the judiciary from unfit candidates" and sought lifetime appointments to remove "the judiciary from popular feedback mechanisms."¹³⁶ The Judiciary Act of 1789 instituted residency requirements in order to remove "the need for judges to travel long distances between their court and home and inspir[e] public confidence by having a person with local ties serve as a public official."¹³⁷

¹³⁰ *Id.*

¹³¹ *Id.* at 1336.

¹³² *Id.* at 1336-37.

¹³³ See *supra* note 35 and accompanying text (stating that the recent *Dobbs*, *Bruen*, and *Kennedy* cases support the notion that controversial matters of national debate are often subject to the views of the constitutional framers, particularly considering that Article III was ratified in 1788 and Congress passed the Judiciary Act in 1789).

¹³⁴ James F. Ianelli, *The Sound of Silence: Eligibility Qualifications and Article III*, 6 SETON HALL CIRCUIT REV. 55, 61-62 (2010).

¹³⁵ *Id.* at 61; see also AMAR, *supra* note 35, at 287 (stating that during the eighteenth century, "Law did not matter, or if it did, it was routinely bent to favor rich and powerful insiders. Judges were merely puppets and lackeys of the unelected autocrats in charge.").

¹³⁶ Ianelli, *supra* note 134, at 61.

¹³⁷ *Id.* at 62.

Contrary to Alexander Hamilton's views, Thomas Jefferson did not believe that Article III judges should retain lifetime compensation if their judicial offices ceased to exist and that judges should only be compensated for the services they rendered.¹³⁸ Hamilton and the Federalists, however, believed that so long as the judges acted in good behavior, federal judges should be entitled to salaries for life because "these honorable public servants had given up other positions in reliance on the promises made in Article III."¹³⁹ "In their conversations about the draft bill of rights in 1787-1789, Jefferson and Madison had sung the praises of an independent judiciary; but once in power, Jefferson and his allies had begun to sing a different tune."¹⁴⁰ Despite Jefferson's vendetta against the judicial branch during his presidency, Justice John Marshall's cunning opinion in *Marbury v. Madison*¹⁴¹ "made it hard for Jefferson [and Madison] to retaliate [or defy]," and made it hard for the Anti-Federalists "to rouse popular resentment against the justices" since Justice Marshall "had ruled in favor of the Jefferson administration."¹⁴²

However, Alexander Hamilton's views expressed in Federalist No. 78 more clearly provide support for the proposition that the Founding Fathers did not intend for the use of AI assistance in judicial decision-making. In Federalist No. 78, Hamilton argued for the lifetime appointment of Article III judges by stating that permanent tenure contributes to "that independent spirit in the judges which must be essential to the faithful performance of so arduous a duty."¹⁴³ He explained that the independence of judges is required to be a safeguard from the effects of an ill-motivated majority and to protect against "dangerous innovations in the government, and serious oppressions of the minor party in the community."¹⁴⁴ Where AI creators are likely to be (if not certainly) influenced by majoritarian culture, how can a judge effectively protect against the "ill-humors" of society if he/she almost entirely relies on AI to adjudicate a controversial dispute? It goes without saying that the creator of the AI system employed by the judge will be

¹³⁸ AMAR, *supra* note 35, at 486-87.

¹³⁹ *Id.* at 487.

¹⁴⁰ *Id.* at 489.

¹⁴¹ 5 U.S. (1 Cranch) 137 (1803).

¹⁴² AMAR, *supra* note 35, at 497.

¹⁴³ Alexander Hamilton [Publius], *The Federalist Papers No. 78* [1788], <https://guides.loc.gov/federalist-papers/text-71-80#s-lg-box-wrapper-25493470>.

¹⁴⁴ *Id.*

able to impart some of its own potential bias. This threatens judicial independence, and leaves the door open for AI system creators to interfere with how cases are adjudicated. Hamilton, like others in the founding generation, rejected the notion that judges should consult popularity over the Constitution and legislation.¹⁴⁵

Moreover, Alexander Hamilton advocated for the permanent tenure of judges because “of the nature of the qualifications they require.”¹⁴⁶ He wrote:

To avoid an arbitrary discretion in the courts, it is indispensable that [judges] should be bound down by strict rules and precedents, which serve to define and point out their duty in every particular case that comes before them; and it will readily be conceived from the variety of controversies which grow out of the folly and wickedness of mankind, that the records of those precedents must unavoidably swell to a very considerable bulk, and must demand long and laborious study to acquire a competent knowledge of them. Hence it is, that there can be but few men in the society who will have sufficient skill in the laws to qualify them for the stations of judges. And making the proper deductions for the ordinary depravity of human nature, the number must be still smaller of those who unite the requisite integrity with the requisite knowledge. These considerations apprise us, that the government can have no great option between fit character; and that a temporary duration in office, which would naturally discourage such characters from quitting a lucrative line of practice to accept a seat on the bench, would have a tendency to throw the administration of justice into hands less able, and less well qualified, to conduct it with utility and dignity.¹⁴⁷

Hamilton was explicit in his belief that judges ought to make up a very small or selective group of individuals who “have sufficient [legal] skills” and the ability to make “proper deductions or the ordinary depravity of human nature” and “unite the requisite integrity with the

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

requisite knowledge.”¹⁴⁸ The active use of AI systems in judicial decision-making could haphazardly broaden the judicial candidate pool and risk individuals (or even AI systems) occupying the post without possessing these required elements. Thus, it would appear to contravene Hamilton’s views if the ability to hold a judicial position was diminished in a manner that would deprive judges of the ability to make deductions based on human nature to protect against the “wickedness of mankind.”¹⁴⁹ It is especially problematic considering Professor Surden’s contention that current AI systems experience difficulty in analyzing social norms and public policy and understanding popular culture.¹⁵⁰

The ability for adjudicators to impart unique perspectives in their judicial philosophy free from outside influence is integral to our justice system. While some judges are revered for their kindheartedness and empathetic views, other judges are notorious for being nonsensical and scrupulous. For example, Judge Frank Caprio has become famous for his compassionate rulings.¹⁵¹

Judge Caprio has served on the Providence, Rhode Island Municipal Court since 1985, and is the former host of the popular television show “Caught in Providence.”¹⁵² Often times, the judge will make “high schoolers promise to attend college in return for dropping [parking/traffic] tickets” and frequently creates payment plans for individuals struggling financially.¹⁵³ Very rarely will he lose his temper when someone is trying to pull-a-fast-one on him.¹⁵⁴ “The judge thinks he’s gone viral because people have lost faith in government and are accustomed to institutions coming down hard without regard for

¹⁴⁸ *Id.*

¹⁴⁹ *Id.* Diminished, meaning judicial capacity, or the ability to make competent decisions free from any external AI systems. Not as in diminished performance capabilities (which would presumably increase with the rising use of AI by judges).

¹⁵⁰ See *supra* notes 127-128 and accompanying text. It should be noted that Professor Surden’s paper was written in 2019.

¹⁵¹ *80-year-old Judge Becomes Unlikely Internet Star*, CBS NEWS (Aug. 23, 2017), <https://www.cbsnews.com/news/frank-caprio-80-year-old-judge-becomes-internet-star-providence/>.

¹⁵² *Frank Caprio: The Nicest Judge in the World*, FRANKCAPRIO.COM, <https://www.frankcaprio.com/>. Judge Caprio’s nationally syndicated television show was nominated for a Daytime Emmy award. *Id.* The judge holds a J.D. and Honorary Doctorate of Law from Suffolk University School of Law and an Honorary Doctorate in Public Service from the University of Rhode Island. *Id.*

¹⁵³ *80-year-old Judge Becomes Unlikely Internet Star*, *supra* note 151.

¹⁵⁴ *Id.*

personal circumstances.”¹⁵⁵ Judge Caprio believes in considering “whether somebody is sick and whether their mother died and whether they have kids who are starving.”¹⁵⁶

Judge Caprio’s kind and gentle approach has been praised by millions of people on social media and his loyal television viewers.¹⁵⁷ He is proud to provide “a little bit more understanding toward the United States system of government and how it works, that we are a decent peace-loving people, and not how we’re being portrayed in other parts of the world.”¹⁵⁸

Similarly, one of America’s most beloved television judges, Judge Judith Sheindlin, has been crowned the highest-paid television show host with an annual \$47 million salary.¹⁵⁹ Her hit television show “Judge Judy” garnered an average 10 million viewers each day over the course of the show’s 25-season run.¹⁶⁰ Like Judge Caprio, Judge Judy recognizes that the law is not always applied even-handedly, and that “because you’re dealing with lives, you have to rely on common sense and sometimes your gut.”¹⁶¹ Her legal career began in 1972 prosecuting juvenile delinquents and went on to serve as the Supervising Judge for the Manhattan Family Court from 1986 to 1996.¹⁶² The hallmark of Judge Judy’s philosophy is strictly holding individuals accountable for their actions.¹⁶³ She believes that the judicial system

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ Mikey O’Connell, *Judy Sheindlin on Ending ‘Judge Judy,’ Her New Show and the Legal System’s Biggest Flaw*, THE HOLLYWOOD REPORTER (May 13, 2021), <https://www.hollywoodreporter.com/tv/tv-news/judge-sheindlin-ending-judge-judy-1234950880/>.

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² JUDY SHEINDLIN & JOSH GETLIN, DON’T PEE ON MY LEG AND TELL ME IT’S RAINING: AMERICA’S TOUGHEST FAMILY COURT JUDGE SPEAKS OUT (1997), at 3 (“I loved my work and soon developed a reputation as a no-nonsense prosecutor.”). Judge Judy graduated from New York Law School in 1965 and was appointed to the bench in 1982 by Mayor Ed Koch. *Judge Judy Sheindlin Makes Legacy Gift to New York Law School to Support Women in the Law*, NYLS (Jan. 5, 2022), <https://news.nyls.edu/judge-judy-sheindlin-makes-legacy-gift-to-new-york-law-school-to-support-women-in-the-law/>.

¹⁶³ SHEINDLIN & GETLIN, *supra* note 162, at 233 (“If I had to boil this book down to one final phrase, it would be that people, not government, create opportunity. . . . [—instead of leniency by judges and bloated social welfare programs—] [s]elf-discipline, individual accountability and responsible conduct is the answer. . . . I have

must provide a balance of “showing compassion and setting strict limits.”¹⁶⁴ She vehemently disagrees with naïve judges whose “benevolent philosophies have made our courts the joke of the street” while at the same time “[c]rime is exploding, kids have no limits[,] and the punishments we mete out are laughable.”¹⁶⁵

As can be gathered by the success of both Judge Judy and Judge Caprio, it is incredibly important for the judicial branch to retain its ability to influence the outcome of cases based on the independent human nature and character of each individual judge. The success of both judges demonstrates not only that their courtrooms make for good television, but also that Americans want to be treated *like* humans. They want to air their grievances towards another human being and be heard. That is undoubtedly something one would consider deeply rooted in history and tradition and is a crucial facet of being afforded sufficient procedural due process—notice and a meaningful opportunity to be heard.

One recent example of the American public’s interest in ensuring protection against some undesirable consequences of prevalent governmental use of AI is the Biden Administration’s recently produced *Blueprint for an AI Bill of Rights*.¹⁶⁶ The purpose of this proposed framework is to protect Americans from “potential harms presented by the widespread deployment” of AI.¹⁶⁷ The *Blueprint for an AI Bill of Rights* applies to AI systems that could potentially “impact the American public’s rights, opportunities, or access to critical resources or services.”¹⁶⁸ The five principles expressed in this blueprint that should guide AI developers, designers, and deployers are: (1) the use of safe and effective systems; (2) algorithmic discrimination

seen so many programs that are society’s giveaways: housing, welfare, special education, free medical care, free transportation, adoption subsidies, social security disability for alcoholics and drug addicts. The list is endless, and the results have not produced a more responsible or productive population. There may be a few isolated success stories paraded by the media, but the whole picture does not justify the billions spent by taxpayers.”)

¹⁶⁴ *Id.* at 14.

¹⁶⁵ *Id.* at 15.

¹⁶⁶ *Blueprint for an AI Bill of Rights*, WHITEHOUSE.GOV, <https://www.whitehouse.gov/ostp/ai-bill-of-rights/>.

¹⁶⁷ Allison Grande, *What to Know About the White House’s Sweeping AI Directive*, LAW360 (Nov. 2, 2023), <https://plusai.lexis.com/api/permalink/5a2f1a83-2b21-4d77-984a-8c166ffe6d60/?context=1545874>.

¹⁶⁸ *Blueprint for an AI Bill of Rights*, *supra* note 166.

protections; (3) data privacy; (4) notice and explanation; and (5) human alternatives, consideration, and fallback.¹⁶⁹ With respect to data privacy, individuals “should be free from unchecked surveillance,” and such AI “should be subject to heightened oversight that includes at least pre-deployment assessment of their potential harms and scope limits to protect privacy and civil liberty.”¹⁷⁰ Regarding notice and explanation, individuals affected by AI systems should be provided with timely and accessible notice that such AI systems are in use, along with a clear description and explanation of the system’s functionality.¹⁷¹

With these principles in mind, it is incumbent for the legislative branch to ensure that these protections exist with respect to future governmental use of AI systems. Lawmakers must exercise caution when developing initiatives to use AI as a method of saving sparse governmental resources by recognizing that the continuous government surveillance and tracking of Americans’ whereabouts is objectionable.¹⁷² Unfettered tracking of everyone’s movements in order to capture the moment where one violates the law is not in harmony with the spirit of our Nation and is not deeply rooted in history and tradition. Moreover, lawmakers must “do their homework” and make adequate investigative measures to support legislation subjecting individuals to AI assisted enforcement mechanisms.¹⁷³ In light of New York State’s use of AI to capture school bus stop-arm violations (in addition to red light and speeding infractions), concerned New Yorkers should advocate for their own state AI bill of rights recognizing the undesirable consequences and harms posed by the extensive use of AI systems in law enforcement.

IV. CONCLUSION

A thorough review of New York case law demonstrates that the school bus safety program under VTL § 1174-a is constitutional and does not deprive violators of any fundamental rights. The law is

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² Within the Fourth Amendment context, see, for example, *United States v. Jones*, 565 U.S. 400 (2012); and *Carpenter v. United States*, 138 S. Ct. 2206 (2018).

¹⁷³ See generally *Krieger v. Rochester*, 978 N.Y.S.2d 588 (Sup. Ct. Monroe Cnty. 2013); see also *supra* notes 94-102 and accompanying text.

rationally related to a legitimate government objective since the legislature clearly explained that the school bus cameras are needed to ensure the protection and safety of student transportation to school, when a study demonstrated that there were over nearly 50,000 illegal school bus stop-arm passings per day at the time the legislation was enacted. Alleged traffic violators are not entitled to heightened due process requirements because it is an entirely civil penalty mechanism. Also, the mere fact that the school bus camera safety program appears to be a “cash grab” does not render it unconstitutional. Despite the fact that the program is constitutional under this Article’s analysis, legislators should exercise caution when allowing the active use of AI systems in adjudicatory proceedings. The legislative branch should take measures to implement the principles articulated in the *Blueprint for an AI Bill of Rights*. A challenge by disgruntled residents against the school bus stop-arm camera safety program is better suited for the legislative branch rather than the judiciary and it is more appropriate to treat such concerns as a lobbying consideration. Lastly, it is not unreasonable to suspect that the increasing prevalence of AI systems in the adjudication process would likely be struck down by the United States Supreme Court for a lack of historical support as understood by our Founding Fathers. The framers intended for only a select group of individuals combining human nature with the requisite legal knowledge and skill to combat the “wickedness of mankind.”