

UPDATE

NEW YORK STATE SHERIFFS' ASSOCIATION



*Decisions of Interest to
Sheriffs, Undersheriffs and Supervisors*

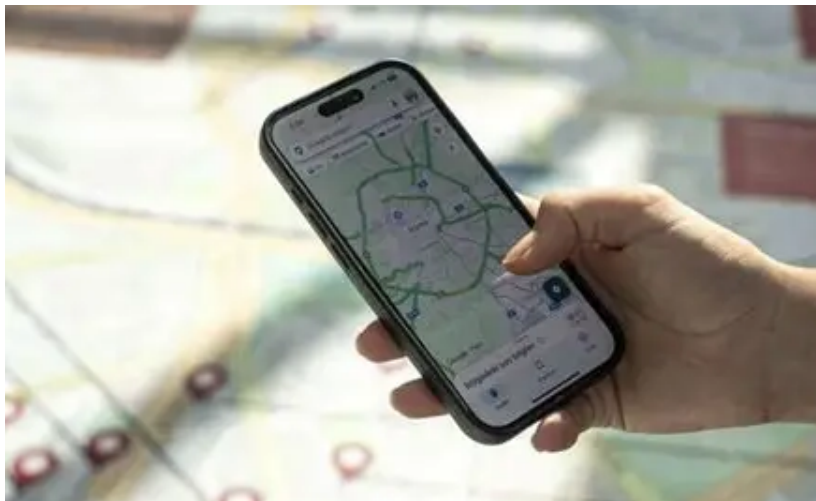


May 15, 2026

US Supreme Court to Decide if Geofence Warrants Violate Fourth Amendment Protection Against Unreasonable Searches

A bank robber in 2019 stole almost \$200,000 from a bank at gunpoint, and got away before police were able to get to the scene. Traditional investigation, including witness interviews, review of the bank's security footage, and other actions did not help. The police later obtained a subpoena requiring Google to establish a "geofence" to show location data from all cellphones in the vicinity of the bank for the 30 minutes before and after the robbery. This data, through other good police work (police had discovered a surveillance video showing the defendant holding his cellphone just before the robbery, and allegedly had chosen to keep it with him during the crime) led to the arrest of Chatrue.

The question raised in this case is whether a warrant to search Google's location history tracking violates the Constitutional Fourth Amendment provisions protecting all persons from unreasonable searches. Geofence warrants are investigative tools used when the approximate location and time of a crime are known, but the identities of suspects are not. They compel companies, such as Google, to provide information about devices present within a defined geographic area during a specific timeframe. Law enforcement then analyzes this data to identify potential suspects. So, geofence warrants start not with an identified person, but rather with a location. Clearly, many --hundreds or thousands-- people might be in the area of interest.



In 2018, the Supreme Court held that the government generally needs a warrant to collect location data drawn from cell towers about the customers of cellphone companies, but that court did not address the situation here, where the warrant specifies an area, and not a named person.

Lawyers for defendant Chatrue argued that geofence warrants are nothing more than fishing expeditions, allowing the government to "search first and develop suspicions later."

Whether a person's location history, which is shared with Google, is protected will be the primary issue for the Court to decide.

Google has announced that it no longer stores location history data, but rather that data is only stored on each person's cellphone. Other internet and social media companies may still store this location history data, so the case may have wide ranging applicability.

The case is expected to be decided by the Supreme Court later this year.

Chatrue v United States, 2026.

Failure to Show Certified Mailing Receipt or Postmark Fatal to Landlord/Tenant Proceeding in Post and Mail Service

In an eviction proceeding in New York City, the tenant moved to dismiss the case because he was not properly served with the Notice of Petition and Petition. He contended service was defective because the landlord failed to establish certified mailing.

The landlord claimed that after two unsuccessful attempts at personal service (did the court mean personal delivery?), it effected "conspicuous service" and mailed the notice by certified and regular mail, submitting unpostmarked certified mail receipts. (The court did not define "conspicuous service," but we can assume service was made by tacking



the papers to the door of the premises followed by a mailing). The court granted the tenant's motion to dismiss, concluding that the landlord failed to prove the notice of termination was actually mailed by certified mail as required by RPAPL § 735(1). At best, the landlord was able to show through USPS tracking that

delivery was made to the correct ZIP code, but the tracking could not identify the actual address. This, said the court, was a fatal error.

The court noted that under RPAPL §735 (1), conspicuous service is properly effectuated where a copy of the notice is posted conspicuously on the premises sought to be recovered and copies are sent by certified and by regular mail. There was no question raised about the posting, but the certified mail receipts filed with the court were not postmarked. The landlord tried to argue that simply dropping off the papers at the post office box and accompanying USPS tracking were sufficient to show that the papers were, in fact, mailed correctly. In other cases, both in New York City courts and in the Appellate Term, 2d Dept., courts have ruled that the absence of proof, by means of a postmark, that the post office treated the parcel as certified mail demonstrated that the landlord did not properly serve the tenant with the required papers. And in another case, it was held that even though the landlord provided the court with certified mail receipts with the names and address of the tenants, a failure to show the postage amount or post office stamp on the receipts was considered as a defective service.

Accordingly, the court dismissed the petition, and the landlord had to commence the proceeding again.

Rogans Realty Corp v Rosario, New York City Civil Court, April 17, 2026

Although Claimant Called Police After a Suspected Break-In At His Home, Whether Police Were Allowed to Enter the Home and Seize Weapons Disputed; Claimant Met Police At the Door and Advised That No One Actually Broke In

On January 13, 2023, Campbell had his wife call their local police department, suspecting that their car had been vandalized and that their house had been breached. Campbell then waited for the police on his front porch. According to the complaint in this civil case, when police officer Mushalla and a partner arrived, Campbell told Mushalla that "no one actually came into the home", but Mushalla essentially ignored what Campbell was telling him and entered the house, where he saw Campbell's shotgun in plain view and demanded the rest of Campbell's guns and ammunition. Campbell's civil

complaint also alleged that Mushalla and his partner grabbed all his guns, ammo, bb guns and other “wealth items” and left without explaining or documenting anything.



Are these claims sufficient to state a §1983 claim under the Fourth Amendment against Mushalla? The court said yes, but also stressed that nothing was proven yet, so it was just ruling on the sufficiency of the allegations in the complaint. It said that although the fact that Campbell had summoned the police to his home might suggest that the officers were thereby given consent to enter, it could

also reasonably be inferred that any such implied permission to enter was rescinded by Campbell's informing Mushalla that no interloper had entered the house. This complaint was filed by Campbell pro se, and the court noted leniency when reviewing pleadings from a lay person: while the claim must be dismissed if it is frivolous or fails to state a claim on which relief may be granted, it is not to be dismissed simply because the court finds the plaintiff's allegations unlikely. The court added that dismissal for failure to state a claim is not permissible simply because some important alleged aspect of the claim might not be credited at this early point in the litigation.

The 2nd Circuit Court of Appeals said that the district court was wrong to dismiss the claim as frivolous, and Campbell's Fourth Amendment claim against the officers for the search of his home and seizure of his firearms and other items could proceed.

Campbell v NYS Police, April 9, 2026, U.S. Court of Appeals for the Second Circuit

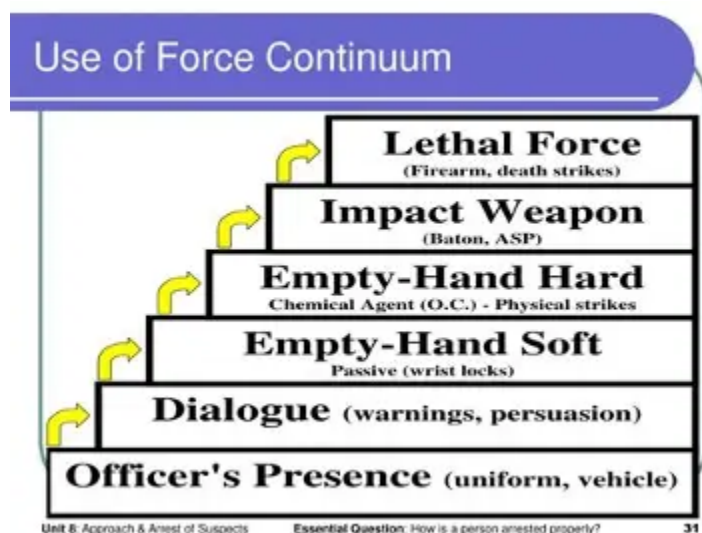
Plaintiff Tried to Present Marshal From Entering Premises to Enforce Eviction Order, Allowing Marshal to Use Reasonable and Minimal Force to Enter

In 2006, Plaintiff and his then-wife, Tiffany Eastman, purchased a condominium in New Rochelle, New York for \$610,000, financing the purchase through two mortgages. After

his divorce in 2010, Plaintiff obtained full ownership of the condominium. In 2013, however, the property became the subject of foreclosure proceedings.

In a foreclosure action by the lender, the parties agreed that if Plaintiff failed to modify, refinance or pay off the mortgage by 5:00 p.m. on October 4, 2023, he would have to vacate the premises by 5:00 p.m. the following day. If he failed to do so, the settlement order entitled the lender to have plaintiff removed from the premises by law enforcement without further motion practice or court order.

Plaintiff did not meet the deadline, and a subsequent Supreme Court order provided that Plaintiff be forcibly removed from the premises pursuant to the settlement agreement. The order was presented to a marshal for enforcement, who placed a notice on Plaintiff's door notifying him that he had until 9:30 a.m. on March 4, 2024 to vacate the premises and that all personal belongings left inside the apartment would be removed. At that time, Plaintiff was still living at the premises.



The condominium board where the premises were located claimed that they would not allow the Marshal to enter the building. When the Marshal came to evict him from the premises, plaintiff used his body to block the Marshal's entry, and the Marshal pushed him out of the way before attempting to enter the building. Plaintiff also claims that video evidence shows that the Marshal brandished his weapon and struck Plaintiff with the door, causing him

to sustain bruised ribs and physical pain. Plaintiff further claimed that the marshal said "I am going to kill you bro," and claims that the concierge had to step in and restrain the Marshal from killing him.

The Marshal said in defense that he only used minimal force to move Plaintiff out of the way and gain entry to the building after telling Plaintiff that he had an eviction warrant and that Plaintiff should take any dispute about it to the court. The Marshal denied ever touching his gun, let alone brandishing it.

On a motion for summary judgment, the Court upheld the actions of the Marshal and dismissed the complaint. It said that analyzing an excessive force claim under the Fourth Amendment requires a balancing of the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion, quoting earlier cases:

"In deciding whether or not the amount of force used is reasonable, courts must consider the totality of the circumstances faced by the officer on the scene."...Not every push or shove, even if it may later seem unnecessary in the peace of a judge's chambers, violates the Fourth Amendment."

Plaintiff tried to argue that the Marshall did not need to use any force whatsoever to evict him because he was already outside of the building, "so there was no one inside to evict." But the fact that Plaintiff was outside did not mean that the Marshal no longer needed to enter the building to carry out the eviction order, which required him to take possession of the unit and remove any remaining personal property. "The suggestion that Ortiz [the Marshal] should have abandoned his task because Plaintiff was outside the building at the moment of Ortiz's arrival is absurd, as that would leave Plaintiff free to return to the apartment and would do nothing to secure it for its rightful owner," said the court.

And, the court said that the condominium board had no right to interfere with the Marshal, and that Plaintiff provided "no authority for the startling proposition that it would be appropriate for a third party to hinder the execution of a court order."

With regard to the level of force used, the Court rejected plaintiff's claims, and said that the video did not show the Marshal intentionally hitting Plaintiff with the door while Plaintiff was standing off to the side --- rather, it appeared that any contact the door made with Plaintiff's body resulted from the struggle between the Marshal trying to open the door and Plaintiff trying to force it closed. And at most, the Marshal may have shoved plaintiff during his attempt to open the door, but the court said there was no excessive force was used, and any such minimal force was objectively reasonable in light of the undisputed fact that Plaintiff was standing in the Marshal's way and trying to prevent him from entering the building.

Plaintiff's civil rights claim for damages was dismissed by the court.

Mongiello v. City of New Rochelle, April 13, 2026, U.S. District Court for the Southern District of New York,

Court Rules That DEA Had Probable Cause for Search, Does Not Require Law Enforcement to Have “Airtight Case” for Search Authority

In August of 2024, the Drug Enforcement Administration ("DEA") began investigating a store in Manhattan, which sold "narcotics cutting agents," non-narcotic materials that can be mixed with narcotics to reduce their potency and increase their saleable volume. From August 2024 to February 2025, an undercover officer and a confidential source made multiple visits to the store. During these visits, after the undercover officer and source asked to buy cutting agents, a store employee would retrieve a weighted black plastic bag from a nearby shed and give them the bag containing the cutting agents.

On August 11, 2025, DEA agents observed Gagot exit a vehicle from the passenger seat and enter the store. Shortly thereafter, the agents observed an employee exit the store, go to the shed, and bring a weighted black plastic bag back to the store. Gagot then exited the store and returned to the waiting vehicle. The agents were not in a position where they were able to see what, if anything, Gagot was holding when he exited the store and re-entered the vehicle. The agents followed Gagot as he rode in the vehicle to an apartment complex in the Bronx. There, they observed him exit the vehicle and enter the apartment complex with a weighted black plastic bag that looked like the one retrieved by the store employee from the shed. One agent followed Gagot into the building and learned from the apartment complex's security personnel that a resident gave Gagot permission to enter the building and their individual unit, Apartment 9E. The agent then followed Gagot into the elevator and rode it with him to the ninth floor. Although the agent did not see which unit Gagot entered, the agent approached Apartment 9E and heard sounds consistent with those they would expect to hear when cutting narcotics. Specifically, the agents reported hearing cutting sounds, consistent with the act of cutting or breaking down narcotics; blender sounds, consistent with the act of mixing narcotics with cutting agents; and loud banging noises, consistent with the use of a kilogram press to press narcotics (after they have been mixed with cutting agents) into kilogram-shaped bricks. The agents also reported hearing two male voices speaking from inside the apartment about money. A few hours later, the officers observed Gagot exit the building and enter an Uber taxi with a weighted shopping bag. The officers followed the vehicle for a few blocks before pulling it over and conducting a warrantless search. During the search of the vehicle, law enforcement seized the weighted shopping bag and found a closed shoebox inside. They then opened the shoebox and recovered approximately two kilogram-sized bricks of what appeared to be

narcotics, which later tested positive for cocaine. They did not seek or obtain Gagot's consent to search the shopping bag or the shoebox. After recovering the two kilogram-sized bricks, the agents placed Gagot under arrest. The Government then applied for a search warrant of Apartment 9E. A Magistrate Judge authorized the apartment search. Inside, the agents found large quantities of narcotics; materials and equipment used to prepare, mix, and press narcotics for wholesale distribution, including a blender and kilogram press; three firearms and ammunition; and large amounts of cash. On October 27, 2025, Gagot was indicted on two counts: conspiracy to distribute controlled substances, and distribution of controlled substances.

Gagot's counsel filed a motion to suppress. It was supported by an affidavit from Gagot, who acknowledged that the shoebox in the shopping bag he carried contained "about two kilograms of cocaine." Gagot also claimed that "the officers did not ask me for permission to search the shopping bag, and I did not give them consent to search the bag or the box inside it."

Court Review

Gagot made a single argument in support of his motion to suppress the two kilograms of cocaine recovered from the shoebox inside the bag he carried. He asserts that the DEA agents lacked the requisite probable cause to search the vehicle and the shopping bag and shoebox within it. Thus, Gagot contends, the search violated his Fourth Amendment rights. This argument fails, concluded the court. Noting that warrantless searches are per se unreasonable under the Fourth Amendment --- subject only to a few specifically established and well-delineated exceptions, this district court said that the Supreme Court has long recognized an exception for automobile searches. Under the automobile exception, if a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment permits police to search the vehicle without more. And, if the exception applies, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search.

Probable cause exists when "the facts and circumstances within the officers' knowledge and of which they had reasonably trustworthy information are sufficient in themselves to warrant a person of reasonable caution in the belief that evidence of a crime will be found in the place to be searched." The court decided that the government here established probable cause for the vehicle search:

- A few hours before the search, DEA agents saw Gagot entering a store that sold narcotics cutting agents and observed a pattern of activity consistent with a purchase.

- Shortly after Gagot entered the store, the DEA agents saw an employee exit the store, go to the shed, and bring back a weighted black plastic bag. This is the same pattern of activity that the agents observed when, across a period of six months, they completed multiple undercover purchases of cutting materials from the same store and received the materials in black plastic bags.
- The agents then observed Gagot leave the store, reenter the car that brought him there, and ride in the vehicle to an apartment complex in the Bronx. There, the agents saw him exit the car with what appeared to be the same weighted plastic bag that the store employee brought back from the shed.
- After one agent followed Gagot to the ninth floor of an apartment building, the agent heard sounds from Apartment 9E --- the apartment unit that the defendant told security he was visiting --- that were consistent with the act of mixing narcotics with cutting agents and pressing the mixture into kilogram-sized bricks. A few hours later, the officers witnessed Gagot exiting the apartment building and entering an Uber taxi with a weighted shopping bag.

These facts are sufficient, concluded the court, to warrant a person of reasonable caution in the belief that evidence of a crime would be found in the Uber --- and, specifically, in the shopping bag that Gagot carried into it. Thus, the agents had probable cause to conduct a warrantless search of not only the vehicle but also the shopping bag and shoebox within it.

In support of suppression, Gagot argued that the Government's case "suffers from multiple critical gaps in the chain of observations." Specifically:

1. the agents were not in a position to see whether Gagot carried anything when he exited the store and reentered the vehicle
2. the agent who followed him onto the ninth floor did not see which unit he entered
3. the noises from Apartment 9E were "consistent with numerous lawful activities," and
4. the agents did not know for certain whether the weighted shopping bag Gagot carried when he exited the apartment building contained contraband.

But the court said that none of these so-called "gaps" vitiated probable cause. "Although probable cause requires more than a mere suspicion of wrongdoing, it focuses on probabilities, not hard certainties, and "finely tuned standards such as proof beyond a reasonable doubt or by a preponderance of the evidence, useful in formal trials, have no place in the probable-cause decision." The undisputed facts here were sufficient to establish that the law enforcement officers had a reasonable belief that evidence of a crime would be found in the searched vehicle and, specifically, in the shopping bag.

Their lack of an airtight case against the defendant, at the time of the search, did not bar a finding of probable cause.

US v Gagot, April 13, 2026, U.S. District Court for the Southern District of New York, U.S.

Even “Arguable” Probable Cause is Enough to Warrant Qualified Immunity to Police Officers

On the morning of October 18, 2019, video footage from an MTA bus traveling through Brooklyn captured the following:

- At approximately 7:53 AM, a teenage girl ("Complainant") boarded a crowded MTA bus on her way to school. Upon boarding, the Complainant was standing to the right of and slightly behind an individual later identified as Sacaza.
- At this point in the video, the Complainant and Sacaza were located at the very front of the bus, on the passenger side between the driver and the doors. Sacaza's left hand was holding onto a railing and his right hand was out of view, but he was carrying a bag. While the Complainant and Sacaza were at the front of the bus, the MTA Footage does not definitively show any contact between them.
- Around 7:59 AM, Sacaza stepped off the bus to allow others to board, and the Complainant moved further toward the middle of the bus. Sacaza then re-boarded the bus and stood a few steps away from the Complainant. After about fifteen seconds, Sacaza moved further toward the middle of the bus and stood directly behind the Complainant. Still, Sacaza's left hand was holding onto a railing, and his right hand was out of view.
- Sacaza stood directly behind the Complainant for just over a minute. During this minute, the Complainant looked back several times and appeared uncomfortable, though the MTA footage still does not definitively show any contact between Sacaza and the Complainant.
- After seeming to notice the Complainant's apparent discomfort, a nearby passenger offered the Complainant a seat. Once seated, the Complainant appeared to take several videos of Sacaza. About a minute and a half later, as Sacaza began to exit the bus with the Complainant following behind, the Complainant showed the nearby passenger something on her phone and appeared to begin crying. The female passenger consoled the Complainant as she exited the bus.

- After exiting at the front of the bus, Sacaza immediately boarded again through a different door near the middle of the bus and continued riding the bus.

After arriving at school that day, the Complainant notified someone at the school about the alleged assault. The school then notified the Complainant's father and called 911. During an interview with the police, the Complainant texted one of the officers videos of Sacaza that she took while she and Sacaza were still on the bus. A few days later, a Sergeant told the investigating officer that the man he was looking for was likely Sacaza, who had been the subject of a 2017 city wide "public lewdness pattern" case and a person of interest in a different case for public lewdness.

Soon after, a detective presented the Complainant with a double-blind photo array of six individuals, and she identified Sacaza in the photo array. Sacaza was arrested, and on the day of the arrest the complainant also identified Sacaza in a lineup, saying she was "absolutely positive" about her identification of Sacaza.

The criminal complaint signed by the complainant charged Sacaza with forcible touching, sexual abuse, harassment, and endangering the welfare of a child. The complaint also alleged that while located at the front of the MTA bus, Sacaza "rubbed the Complainant's vagina and inner thigh with his hand" without her consent. It also alleged that after the Complainant moved further back on the MTA bus, Sacaza followed her and "brushed his penis against her buttocks in a side to side motion."

Without explanation, the court noted that the criminal case against Sacaza was dismissed on speedy trial grounds. Following the dismissal, he sued the officers for false arrest, malicious prosecution, and denial of his right to a fair trial pursuant to 42 U.S.C. §1983 and New York state law.

Were the officers entitled to qualified immunity?

Both parties asked for summary judgment, but the district court denied both parties' motions, concluding that the issues were disputed and should be decided by a jury. In so doing, the district court said that a reasonable jury could decide in favor of either party.

The Second Circuit Court of Appeals reversed, and granted the officers qualified immunity protection.

Qualified immunity doctrine requires plaintiffs to show not only that a constitutional violation occurred, but also that the violation was of clearly established law that a reasonable officer in the defendant's position would have known about. Courts often

grant qualified immunity even in cases where constitutional violations may have occurred if the legal standards were not clearly established at the time of the incident.

Probable Cause

Law enforcement officers have probable cause to arrest when they have knowledge or reasonably trustworthy information of facts and circumstances that are sufficient to warrant a person of reasonable caution in the belief that the person to be arrested has committed or is committing a crime. Unless exculpatory evidence or circumstances that raise doubts as to the alleged victim's veracity arise, probable cause is present where a police officer relies on such victim's identification of the suspect and statement of the alleged crime. Probable cause "is a fluid standard" and law enforcement is not required to rely on "hard certainties" or a belief that, more likely than not, a crime has been committed. "Rather, it requires only facts establishing the kind of fair probability on which a reasonable and prudent person, as opposed to a legal technician, would rely."

The common quote in most qualified immunity cases is that the doctrine shields government actors, such as police officers, from liability for actions taken in their official capacity --- providing ample protection to all but the plainly incompetent or those who knowingly violate the law. To determine whether a police officer is entitled to qualified immunity, courts consider:

- whether the facts evince that the police officer violated a statutory or constitutional right; and
- whether the right was clearly established at the time of the challenged conduct.

Under the second prong of a qualified immunity analysis, a right is clearly established when the contours of the right are sufficiently clear that a reasonable official would understand that what they are doing violates that right. In the context of an arresting officer, qualified immunity applies where it was objectively reasonable to believe there was probable cause to make the arrest, or there was *arguable probable cause* --- that is, where reasonable police officers could disagree as to the existence of probable cause.

Arguable Probable Cause

Even absent actual probable cause, police officers are entitled to qualified immunity on federal claims if arguable probable cause existed. Arguable probable cause existed in the current case if a court could conclude that it was objectively reasonable to arrest

Sacaza or if police officers of reasonable competence could have disagreed as to whether probable cause existed.

The district court determined that a reasonable jury could find either probable cause or the lack thereof. If a reasonable jury could find probable cause, then so could a reasonable officer. And if a reasonable officer could find probable cause, then the officers here were entitled to qualified immunity. “Therefore, it follows that to dissipate arguable probable cause, the circumstances or facts casting doubt on a victim's veracity need to be such that no reasonable police officer could find that probable cause existed.”

Sacaza v City of New York. Second Circuit Court of Appeals, March 20, 2026

Actual Notice of Civil Proceeding or Action Is Not Enough to Cure an Insufficient Service of Process

CPLR 312-a allows service of a summons and complaint by an alternate method, allowing the defendant to properly acknowledge service. This CPLR section provides that as an alternative to the methods of personal service authorized by section 307, 308, 310, 311 or 312 of this article, a summons and complaint, or summons and notice, or notice of petition and petition may be served by the plaintiff or any other person by:

1. mailing to the person or entity to be served, by first class mail, postage prepaid, a copy of the summons and complaint, or summons and notice or notice of petition and petition
2. together with two copies of a statement of service by mail and acknowledgement of receipt in the form set forth in the statute, with a return envelope, postage prepaid, addressed to the sender.
3. Service is complete when the defendant, an authorized employee of the defendant, defendant's attorney or an employee of the attorney completes the acknowledgement of receipt and mail or delivers one copy of it within thirty (30) days from the date of receipt. Service is complete on the date the signed acknowledgement of receipt is mailed or delivered to the sender. The signed acknowledgement of receipt constitutes proof of service.

In this case, the court said that plaintiff failed to establish proper service under CPLR §312-a, since there was no indication that the acknowledgment was received. Plaintiff tried to argue that the defendant had actual notice of the case, but the court said that

was not enough. "The statutory scheme governing service is to be strictly construed, and actual notice, without proper service, does not confer jurisdiction", said the court.

Doiban v. Shellpoint Mortgage Servicing, NY Supreme Court, Richmond County, May 11, 2026

Suitable Age and Discretion Service Against Defendant Upheld Even Though the Person Served Is Not a Resident of the Subject Premises

Plaintiff Capital One Bank obtained a default judgment for an unpaid credit account against defendant in October 2025. The defendant moved to vacate the default judgment. He claimed that service of the summons and complaint was not properly effectuated. The process server's affirmation attested to serving a person of suitable age and discretion at defendant's usual home address to a woman named Jacqueline Mcque, described as a black-haired black female, and then mailing the summons and complaint.

The motion was denied. Here, defendant claimed that he had no knowledge of a Jacqueline Mcque residing at his usual place of abode, but he did not provide the court with enough facts to properly contest what appeared to be a proper affidavit of service.

CPLR 308 (2) provides, in pertinent part, that personal service upon a natural person may be made "by delivering the summons within the state to a person of suitable age and discretion at the actual place of business, dwelling place or usual place of abode of the person to be served and by...mailing the summons to the person to be served at his or her last known residence." Courts have held that valid service pursuant to CPLR 308 (2) may be made by delivery of the summons and complaint to a person of suitable age and discretion who answers the door at a defendant's residence, even if that person is not a resident of the subject property. Here, the process server's affirmation of service contained sworn allegations reciting that service was made upon defendant by leaving the relevant papers with a person of suitable age and discretion, namely Jacqueline Mcque, described as a black-haired black female "coresident" who was 45-55 years old, 5'6"-5'8" tall, and weighing 200-240 lbs., at defendant's residence; this was followed up by the required mailing. Accordingly, the affirmation of service constituted prima facie evidence of service of the summons and complaint pursuant to CPLR 308 (2). While the defendant denied knowledge of any person by the name of "Jacqueline Mcque", he

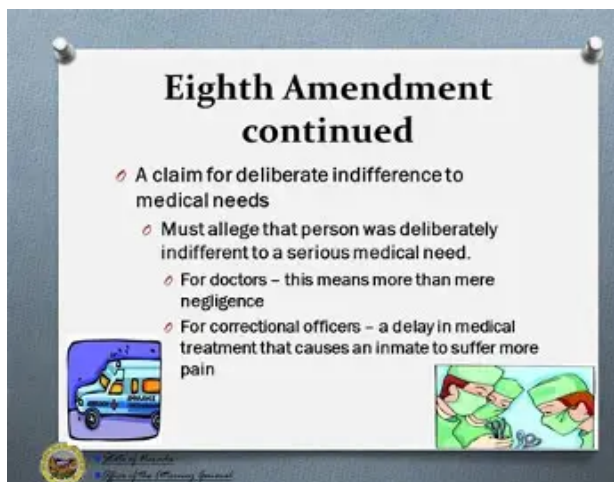
did not argue that Jacqueline Mcque was not present at the subject property and accepted service on his behalf. So, the court said that defendant's unsubstantial denial of receipt was simply insufficient to rebut the presumption of proper service. For example, the court suggested that defendant might have argued that the person described by the process server was not present on the date of service; instead the defendant only made general allegations that he did not know this person.

Accordingly, the judgment was upheld.

Capital One, N.A. v. Heusner, April 1, 2026, Kings County Supreme Court

Deliberate Indifference to Serious Medical Needs

After arriving in prison with a prescription for antipsychotic medication, plaintiff's psychiatrist at the correctional facility discontinued it, and over the following weeks plaintiff deteriorated, engaged in misconduct and was placed in segregated housing and later keeplock. Plaintiff, who suffered from schizoaffective disorder, filed an action under §1983 against DOCCS, alleging violations of his Eighth Amendment right to be free from cruel and unusual punishment, deliberate indifference to the conditions of his confinement and deliberate indifference to his medical needs. The district court dismissed his lawsuit, but the Second Circuit disagreed, and remanded the case for further fact finding. The Circuit Court said that there were triable issues on both Eighth Amendment claims, including defendants' awareness of a substantial risk to plaintiff's health and safety and their alleged disregard of that risk.



Inmate Suarez was diagnosed in 2014 with a schizoaffective disorder. Since his initial diagnosis, his symptoms have fluctuated: when treated, he experienced periods of stability, but when he stopped taking medication, his symptoms worsened and he decompensated. In 2017, while serving a state prison sentence, Suarez was discharged from a psychiatric hospital to Downstate Correctional Facility with a prescription for

an antipsychotic medication. Shortly after Suarez's arrival at Downstate, his assigned psychiatrist there discontinued his prescription. Over the following two months, Suarez decompensated, had an altercation with an officer, and was placed in the Special Housing Unit ("SHU"), where he began hallucinating. After fifteen days in the SHU, a disciplinary hearing officer sanctioned Suarez to placement in "keeplock," where he remained for two additional weeks until his release from Downstate. The day after Suarez was released, provoked by his hallucinations, he stabbed his mother multiple times.

Eighth Amendment Deliberate Indifference

The Eighth Amendment prohibits the infliction of "cruel and unusual punishments", which include "the unnecessary and wanton infliction of pain on a prisoner." To demonstrate an Eighth Amendment violation, a plaintiff must make two showings:

- ☐ First, there is an objective prong: that the alleged punishment was objectively, sufficiently serious. Court precedents establish that "objectively serious" punishment includes, among other things, conditions of confinement that pose an unreasonable risk of serious damage to health and deprivation of adequate medical care, including mental health care.
- ☐ Second, there is a subjective prong: that the prison official involved must have acted with a "sufficiently culpable" state of mind. This second prong requires a showing that the officer acted with at least deliberate indifference to the challenged conditions.

The standard for evaluating a prison official's knowledge is well-established under New York precedent. The Supreme Court has described the requisite mental state as "the equivalent of recklessly disregarding a risk." Thus, the standard requires more than mere negligence, but less than intentional acts or omissions for the very purpose of causing harm or with knowledge that harm will result. The Second Circuit has held in previous cases, for example, that a defendant can be deliberately indifferent where he knew of the health dangers and yet refused to remedy the situation, constituting deliberate indifference, and deliberate indifference to medical needs claim can lie where prison officials deliberately ignore the medical recommendations of a prisoner's treating physicians. And, liability may be imposed on prison staff who discontinue various, significant medical treatments that an inmate was receiving before arrival at the facility, ignoring the recommendations of his prior physician.

Even where a defendant does not outright refuse to remedy a risk, he may exhibit deliberate indifference to a medical need by consciously choosing an easier and less efficacious treatment plan, or by intentionally denying or delaying access to medical

care. And, as in this case, deliberate indifference may be established where an inmate was confined to SHU despite the recommendation that he be placed in a less-restrictive location, and kept there, even when officials knew of the “deleterious effect that his extended confinement in SHU-like conditions” would have on his preexisting mental state.

The court pointed out a few examples where prison officials were not found to be deliberately indifferent:

- The court granted summary judgment to defendant correction officers on a plaintiff's claim for denial of treatment where there was no evidence that the non-medical defendants had the authority to intervene in an admittedly medical decision
- Even where a defendant was a medical professional, courts have held that the defendant was not deliberately indifferent where he had no responsibility for the treatment of the plaintiff.

Applying these principles, the Court concluded that a jury should determine whether the actions of defendants --discontinuing his medication and placing him in restrictive and then keeplock housing-- was sufficient to establish deliberate indifference.

Suarez v Morton, 2nd Circuit Court of Appeals, March 17, 2026

