

THE HON. MICHAEL J. GARCIA: FROM PROSECUTOR TO THE  
COURT OF APPEALS

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Michael J. Garcia began his journey to the Court of Appeals when he graduated from Albany Law School in May 1989 as Valedictorian.<sup>1</sup> His time in Albany left him feeling “always . . . grateful to Albany Law” and motivated to maintain a significant presence with the school.<sup>2</sup> A presence that is appreciated by Albany Law School and the students alike. Judge Garcia started his legal career as an associate with Cahill Gordon & Reindel in Manhattan.<sup>3</sup>

He quickly received his first exposure to the Court of Appeals when he accepted a two-year position as a law clerk to, then Associate Judge of the Court, Judith S. Kaye in 1990.<sup>4</sup> His relationship with Judge Kaye helped him develop a greater understanding of the court’s prestigious history, quoting from a book of Cardozo’s 1920s Yale lectures, that the late judge gave to him, at his swearing in ceremony.<sup>5</sup> Judge Garcia obtained great admiration for the late Judge Kaye during his clerkship, identifying her work ethic as “second to none” and noting that she “exemplified fairness and

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<sup>1</sup> *Michael Garcia '89 Confirmed as Associate Judge on N.Y.'s Highest Court*, ALB. L. SCHOOL (Feb. 9, 2016), <http://www.albanylaw.edu/about/news/current/Pages/Michael-Garcia-89-Confirmed-as-Associate-Judge-on-NY-Court-of-Appeals.aspx> [hereinafter *Michael Garcia '89 Confirmed*].

<sup>2</sup> When announced that Judge Garcia will deliver the keynote address at Albany Law’s 167<sup>th</sup> commencement Judge Garcia stated that “[i]t is an honor to be invited to address the Class of 2018,” where he “look[s] forward to celebrating the accomplishments of this talented class.” *Court of Appeals Judge Garcia '89 to Deliver 167th Commencement Address*, ALB. L. SCHOOL (Feb. 12, 2018), <http://www.albanylaw.edu/about/news/2018/Pages/Court-of-Appeals-Judge-Garcia-%E2%80%9989-to-Deliver-167th-Commencement-Address.aspx>. Judge Garcia was honored by the Government Law Center in their 30<sup>th</sup> anniversary ceremony, delivered the keynote address at the 155<sup>th</sup> commencement and spoke at the event to memorialize his mentor, the late Professor David D. Siegel. *Id.*; *Michael Garcia '89 Confirmed*, *supra* note 1.

<sup>3</sup> *Honorable Michael J. Garcia*, COURT OF APPEALS STATE OF NEW YORK, <https://www.nycourts.gov/ctapps/jgarcia.htm> (last visited June 11, 2018).

<sup>4</sup> *See id.*

<sup>5</sup> *See* Michael Virtanen, *Newest Judge Sworn in at New York’s Highest Court*, SARATOGIAN, (Apr. 25, 2016, 5:31 PM), <http://www.saratogian.com/article/ST/20160425/NEWS/160429786>.

integrity in the judicial process.”<sup>6</sup>

After completing his clerkship with Judge Kaye, Judge Garcia transitioned to the United States Attorney’s Office for the Southern District of New York, where he entered the trenches and began to develop his experience as a trial attorney.<sup>7</sup> In this role, Judge Garcia had the opportunity to litigate a variety of criminal matters. In an iconic and career defining moment for Judge Garcia, he joined the 1993 World Trade Center bombings case by volunteering to personally deliver a search warrant at dawn.<sup>8</sup> This resulted in the first time he called a witness in federal court, a moment that he had immortalized in an oil painting.<sup>9</sup> Ramzi Ahmed Yousef, the mastermind of the World Trade Center bombing, was convicted by a federal jury in 1997.<sup>10</sup> Similarly, Judge Garcia obtained the conviction of Mohamed Rashed Daoud al-’Owhali for bombing the U.S. Embassy in Nairobi, Kenya.<sup>11</sup> In his closing, Judge Garcia stated that this was “mass murder in cold blood.”<sup>12</sup> In addition to al-’Owhali, Mohamed Sadeek Odeh and Wadih el Hage were convicted for their roles in the conspiracy and Khalfan Khamis Mohamed for bombing the embassy in Tanzania.<sup>13</sup>

After leaving for four years, Judge Garcia returned to the United States Attorney’s Office as the United States Attorney in 2005.<sup>14</sup> In this role, he oversaw the office dubbed “a steppingstone for the law’s best and brightest” from 2005 to 2008.<sup>15</sup> Judge Garcia oversaw the

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<sup>6</sup> See Colby Hamilton, *Former U.S. Attorney Michael Garcia Confirmed to Court of Appeals*, POLITICO (Feb. 8, 2016), <https://www.politico.com/states/new-york/albany/story/2016/02/former-us-attorney-michael-garcia-confirmed-to-court-of-appeals-031061>.

<sup>7</sup> See *Honorable Michael J. Garcia*, *supra* note 3.

<sup>8</sup> Robin Finn, *Big Challenges Suit the U.S. Attorney Just Fine*, N.Y. TIMES (Oct. 6, 2006) [http://www.nytimes.com/2006/10/06/nyregion/06lives.html?\\_r=0](http://www.nytimes.com/2006/10/06/nyregion/06lives.html?_r=0).

<sup>9</sup> *Id.* (“It is a favorite and career defining, moment immortalized in an oil painting on his wall: ‘That’s a very young me calling my first witness in a federal trial – a female F.B.I. agent hurt in the 1993 trade center bombing.’”).

<sup>10</sup> Benjamin Weiser, *The Trade Center Verdict: The Overview; ‘Mastermind’ and Driver Found Guilty in 1993 Plot to Blow Up Trade Center*, N.Y. TIMES (Nov. 13, 1997), <http://www.nytimes.com/1997/11/13/nyregion/trade-center-verdict-overview-mastermind-driver-found-guilty-1993-plot-blow-up.html>.

<sup>11</sup> Phil Hirschhorn, *Al-’Owhali Spared Death in Embassy Bombings Trial*, CNN (June 12, 2001, 3:56 PM), <http://www.cnn.com/2001/LAW/06/12/embassy.bombing.verdict/index.html>.

<sup>12</sup> *Id.*

<sup>13</sup> Deborah Feyerick & Phil Hirschhorn, *Jury Convicts Four on All Charges in Embassy Bombings*, CNN (May 29, 2001, 2:01 PM), <http://www.cnn.com/2001/LAW/05/29/embassy.bombings.verdict/index.html>.

<sup>14</sup> Raul A. Reyes, *Who Is Michael J. Garcia? A Latino Judge Is in the Running for FBI Director*, NBC NEWS (May 15, 2017), <https://www.nbcnews.com/news/latino/who-michael-j-garcia-latino-judge-running-fbi-director-n759446>.

<sup>15</sup> *Id.*

investigations of former Governor Elliot Spitzer and John A. Gotti.<sup>16</sup> After Spitzer's name came up in a prostitution investigation, Judge Garcia declined to prosecute because the office will not benefit from winning a prosecution brought for the wrong reason.<sup>17</sup>

He stepped down in 2008 and joined Kirkland & Ellis in New York City.<sup>18</sup> From that post, he was hired by Fédération Internationale de Football Association (FIFA) to lead the corruption investigation in the 2018 and 2022 World Cup bidding process.<sup>19</sup> Judge Garcia was unafraid to ensure that the ethics code remained the highest authority, opining that “no-one is above the ethics code.”<sup>20</sup> He found that FIFA suffered from a lack of leadership and transparency in their ethics code.<sup>21</sup> This lack of leadership was clear when FIFA reduced Judge Garcia's 350-page findings report in to a 42-page summary that Judge Garcia identified as being “materially incomplete” and an “erroneous representation of the facts and conclusions.”<sup>22</sup> Ultimately, this flawed leadership structure and misrepresentation of his findings led to his decision to resign from the investigation.<sup>23</sup>

Certainly, Judge Garcia's experience with Judge Kaye and the U.S. Attorney's Office has shaped his views of the law, New York's highest court and legal ethics. His ethics were clear in how he viewed his role as U.S. Attorney, stating that “the real guiding principle of th[e] office, is that we do the right thing for the right reasons.”<sup>24</sup> Additionally, his experience with Judge Kaye suited him well to take this mindset with him to the court and achieve his goal to “have something of the wisdom and enough of the courage to help light that path forward.”<sup>25</sup>

## I. ON THE COURT OF APPEALS

Since his February 8, 2016 court appointment confirmation, Judge Garcia has authored thirty-eight opinions, including nineteen

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<sup>16</sup> *Id.*; see also Finn, *supra* note 8.

<sup>17</sup> See Reyes, *supra* note 14; Finn, *supra* note 8.

<sup>18</sup> Reyes, *supra* note 14.

<sup>19</sup> Michael Garcia: Fifa World Cup Bid Investigator, BBC NEWS (Dec. 19, 2014), <http://www.bbc.com/news/world-30035670>.

<sup>20</sup> *Id.*

<sup>21</sup> See *id.*

<sup>22</sup> Reyes, *supra* note 14.

<sup>23</sup> *Id.*; Michael Garcia: Fifa World Cup Bid Investigator, *supra* note 19.

<sup>24</sup> Finn, *supra* note 8.

<sup>25</sup> Virtanen, *supra* note 5.

authored for criminal cases,<sup>26</sup> and nineteen in civil cases.<sup>27</sup> Eighteen of these opinions were written for the majority;<sup>28</sup> nine were concurring opinions;<sup>29</sup> and twelve were dissenting opinions.<sup>30</sup> Of the eighteen majority opinions authored, eleven of these decisions were criminal cases<sup>31</sup> and seven were civil cases.<sup>32</sup>

A trend has developed in the opinions authored by Judge Garcia, when he votes with the majority, the decisions are typically unanimous. Fourteen of his eighteen majority opinions were

<sup>26</sup> See *People v. Reyes*, 95 N.E.3d 562, 563 (N.Y. 2018); *People v. Smith*, 92 N.E.3d 789, 791 (N.Y. 2017); *People v. Boone*, 91 N.E.3d 1194, 1204 (N.Y. 2017); *People v. Austin*, 86 N.E.3d 542, 547 (N.Y. 2017); *People v. Bethune*, 81 N.E.3d 835, 839 (N.Y. 2017); *People v. Viruet*, 81 N.E.3d 828, 829 (N.Y. 2017); *People v. Cook*, 75 N.E.3d 651, 651 (N.Y. 2017); *People v. Bridgeforth*, 69 N.E.3d 611, 617 (N.Y. 2016); *People v. Flowers*, 68 N.E.3d 1228, 1229 (N.Y. 2016); *People v. Morgan*, 68 N.E.3d 1224, 1225 (N.Y. 2016); *People v. Aviles*, 68 N.E.3d 1208, 1210 (N.Y. 2016); *People v. Stephens*, 66 N.E.3d 1070, 1072 (N.Y. 2016); *People v. Allard*, 63 N.E.3d 1140, 1141 (N.Y. 2016); *People v. John*, 52 N.E.3d 1114, 1128 (N.Y. 2016); *People v. Nelson*, 53 N.E.3d 691, 701 (N.Y. 2016); *People v. Powell*, 53 N.E.3d 435, 436 (N.Y. 2016); *People v. Parrilla*, 53 N.E.3d 719, 720 (N.Y. 2016); *People v. Griggs*, 56 N.E.3d 203, 204 (N.Y. 2016); *People v. Carver*, 53 N.E.3d 734, 735 (N.Y. 2016).

<sup>27</sup> See *Lohnas v. Luzi*, 94 N.E.3d 892, 893 (N.Y. 2018); *B.F. v. Reprod. Med. Ass'n*, 92 N.E.3d 766, 774 (N.Y. 2017); *Lau v. Margaret E. Pescatore Parking, Inc.*, 90 N.E.3d 1276, 1276 (N.Y. 2017); *Carlson v. Am. Int'l Grp.*, 89 N.E.3d 490, 504 (N.Y. 2017); *Chauca v. Abraham*, 89 N.E.3d 475, 477 (N.Y. 2017); *Makinen v. City of New York*, 86 N.E.3d 514, 520 (N.Y. 2017); *Myers v. Schneiderman*, 85 N.E.3d 57, 87 (N.Y. 2017); *City of New York v. N.Y. State Nurses Ass'n*, 82 N.E.3d 441, 444 (N.Y. 2017); *Acevedo v. N.Y. State Dep't of Motor Vehicles*, 77 N.E.3d 331, 336 (N.Y. 2017); *Kimmel v. State*, 80 N.E.3d 370, 381 (N.Y. 2017); *Obey v. City of New York*, 73 N.E.3d 850, 850 (N.Y. 2017); *Rivera v. Dep't of Hous. Pres. and Dev. of N.Y.*, 74 N.E.3d 653, 655 (N.Y. 2017); *Acme Bus Co. v. Orange Cty.*, 68 N.E.3d 671, 677 (N.Y. 2016); *Rushaid v. Pictet & Cie*, 68 N.E.3d 1, 13 (N.Y. 2016); *Cty. of Chemung v. Shah*, 66 N.E.3d 1044, 1054 (N.Y. 2016); *In re New York City Asbestos Litig.*, 59 N.E.3d 458, 483 (N.Y. 2016); *Tonawanda Seneca Nation v. Noonan*, 57 N.E.3d 1073, 1074 (N.Y. 2016); *S.L. v. J.R.*, 56 N.E.3d 193, 194 (N.Y. 2016); *Columbia Cty. Support Collection Unit v. Risley*, 58 N.E.3d 382, 382 (N.Y. 2016).

<sup>28</sup> *Lohnas*, 94 N.E.3d at 893; *Chauca*, 89 N.E.3d at 477; *Viruet*, 81 N.E.3d at 828; *Acevedo*, 77 N.E.3d at 336; *Rivera*, 74 N.E.3d at 655; *Cook*, 75 N.E.3d at 651; *Flowers*, 68 N.E.3d at 1229; *Morgan*, 68 N.E.3d at 1224; *Allard*, 63 N.E.3d at 1140; *Aviles*, 68 N.E.3d at 1210; *Stephens*, 66 N.E.3d at 1071; *Noonan*, 57 N.E.3d at 1074; *Griggs*, 56 N.E.3d at 203; *S.L.*, 56 N.E.3d at 194; *Risley*, 58 N.E.3d at 382; *Carver*, 53 N.E.3d at 734; *Parrilla*, 53 N.E.3d at 719; *Powell*, 53 N.E.3d at 435.

<sup>29</sup> *Boone*, 91 N.E.3d at 1204; *Austin*, 86 N.E.3d at 547; *Myers*, 85 N.E.3d at 87; *Bethune*, 81 N.E.3d at 839; *Bridgeforth*, 69 N.E.3d at 617; *Rushaid*, 68 N.E.3d at 13; *Shah*, 66 N.E.3d at 1054; *In re New York City Asbestos Litig.*, 59 N.E.3d at 483; *Nelson*, 53 N.E.3d at 701.

<sup>30</sup> *Reyes*, 95 N.E.3d at 563; *Smith*, 92 N.E.3d 789, 791; *B.F.*, 92 N.E.3d at 774; *Lau*, 90 N.E.3d at 1276; *Carlson*, 89 N.E.3d at 504; *Makinen*, 86 N.E.3d at 520; *State Nurses Ass'n*, 29 N.Y.3d at 554; *Kimmel*, 80 N.E.3d at 381; *Cook*, 75 N.E.3d at 661; *N.Y. Obey*, 73 N.E.3d at 850; *Acme Bus Co.*, 68 N.E.3d at 677; *John*, 52 N.E.3d at 1128.

<sup>31</sup> *Viruet*, 81 N.E.3d at 829; *Cook*, 75 N.E.3d at 652; *Flowers*, 68 N.E.3d at 1229; *Morgan*, 68 N.E.3d at 1225; *Allard*, 63 N.E.3d at 1141; *Aviles*, 68 N.E.3d at 1210; *Stephens*, 66 N.E.3d at 1072; *Griggs*, 56 N.E.3d at 204; *Carver*, 53 N.E.3d at 735; *Parrilla*, 53 N.E.3d at 720; *Powell*, 53 N.E.3d at 436.

<sup>32</sup> *Lohnas*, 94 N.E.3d at 893; *Chauca*, 89 N.E.3d at 477; *Acevedo*, 77 N.E.3d at 336; *Rivera*, 74 N.E.3d at 655; *Noonan*, 57 N.E.3d at 1074; *S.L.*, 56 N.E.3d at 194; *Risley*, 58 N.E.3d at 382.

unanimous<sup>33</sup> and eight of his nine concurring opinions were unanimously decided.<sup>34</sup> Only four of the twenty-seven opinions were deeply divided, cases with two or more dissenters.<sup>35</sup> The final case contained a solo dissent from Judge Wilson.<sup>36</sup> Additionally, the three concurrence opinions Judge Garcia joined resulted in a unanimous vote.<sup>37</sup> While the reason is unclear, the trend shows that when Judge Garcia is writing with the majority, the decision is generally unanimous.

The majority opinions authored by Judge Garcia are predominately criminal cases, with eleven criminal cases and only seven civil opinions authored.<sup>38</sup> Within these majority decisions, Judge Garcia's experience as a prosecutor and respect for the judiciary is displayed. His opinions have revealed a trend of pro-prosecution voting and a respect for judicial discretion. Nine of the eleven criminal majority opinions authored by Judge Garcia can be classified as being pro-prosecution.<sup>39</sup> For example, in *People v. Parrilla*, Judge Garcia held that the *mens rea* requirement for the defendant's conviction of third-degree criminal possession of a weapon did not require the prosecution to prove that the defendant had knowledge that the knife possessed met the definition of a "gravity knife."<sup>40</sup> In upholding the conviction, Judge Garcia stated that "the *mens rea* prescribed by the legislature for criminal possession of a gravity knife simply requires a defendant's knowing possession of a knife, not knowledge that the knife meets the statutory definition of a gravity knife."<sup>41</sup>

Similarly, in *People v. Stephens*, Judge Garcia held that that the

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<sup>33</sup> *Acevedo*, 77 N.E.3d at 335; *Rivera*, 74 N.E.3d at 654; *Cook*, 75 N.E.3d at 651; *Flowers*, 68 N.E.3d at 1228; *Morgan*, 68 N.E.3d at 1224; *Allard*, 63 N.E.3d at 1140; *Stephens*, 66 N.E.3d at 1071; *Noonan*, 57 N.E.3d at 1073; *Griggs*, 56 N.E.3d at 203; *S.L.*, 56 N.E.3d at 193; *Risley*, 58 N.E.3d at 382; *Carver*, 53 N.E.3d at 734; *Parrilla*, 53 N.E.3d at 719; *Powell*, 53 N.E.3d at 435.

<sup>34</sup> *Boone*, 91 N.E.3d at 1204; *Austin*, 86 N.E.3d at 549; *Myers*, 85 N.E.3d at 95; *Bethune*, 81 N.E.3d at 839; *Bridgeforth*, 69 N.E.3d at 621; *Shah*, 66 N.E.3d at 1057; *In re New York City Asbestos Litig.*, 59 N.E.3d at 485; *Nelson*, 53 N.E.3d at 704.

<sup>35</sup> *Lohnas*, 94 N.E.3d at 893; *Viruet*, 81 N.E.3d at 828; *Aviles*, 68 N.E.3d at 1209; *Rushaid*, 68 N.E.3d at 22.

<sup>36</sup> *Chauca*, 89 N.E.3d at 481.

<sup>37</sup> *People v. Price*, 80 N.E.3d 1005, 1011 (N.Y. 2017); *People v. Pabon*, 65 N.E.3d 688, 696 (N.Y. 2016); *People v. Frankline*, 57 N.E.3d 26, 30 (N.Y. 2016).

<sup>38</sup> *Compare* cases cited *supra* note 31 (criminal cases in which Judge Garcia wrote for the majority) *with* cases cited *supra* note 32 (civil cases where Judge Garcia wrote for the majority).

<sup>39</sup> *Viruet*, 81 N.E.3d at 829; *People v. Flowers*, 68 N.E.3d 1228, 1231 (N.Y. 2016); *People v. Morgan*, 68 N.E.3d 1224, 1228; *Aviles*, 68 N.E.3d at 1210; *People v. Stephens*, 66 N.E.3d 1070, 1073 (N.Y. 2016); *People v. Griggs*, 56 N.E.3d 203, 205 (N.Y. 2016); *People v. Carver*, 53 N.E.3d 734, 735 (N.Y. 2016); *People v. Parrilla*, 53 N.E.3d 719, 721; *People v. Powell*, 55 N.E.3d 435, 438 (N.Y. 2016).

<sup>40</sup> *Parrilla*, 53 N.E.3d at 721–22.

<sup>41</sup> *Id.* at 720 (emphasis added).

Syracuse Noise Control Ordinance does not “offend the constitutional void-for-vagueness doctrine of due process.”<sup>42</sup> The ordinance precludes an individual from creating “unnecessary noise” in a vehicle on a public highway that can be heard beyond 50 feet from the car.<sup>43</sup> The officers initiated a traffic stop pursuant to the ordinance and subsequently discovered that the defendant possessed crack cocaine.<sup>44</sup> In determining that the ordinance was constitutional, Judge Garcia upheld the criminal conviction for the possession of crack cocaine.<sup>45</sup>

In *People v. Viruet*, Judge Garcia determined that the prosecution’s failure to provide the defense with the surveillance tape after their timely request warranted an adverse inference jury instruction.<sup>46</sup> However, Judge Garcia held that the failure to provide the adverse inference was harmless error, and thus, the conviction for murder in the second degree was upheld.<sup>47</sup> This decision was based on the strength of the prosecution’s proof.<sup>48</sup>

While there are two majority opinions that are not categorized as pro-prosecution, these decisions are not necessarily pro-accused either. In *People v. Cook*, the court held that only one Sex Offender Registration Act risk level determination is permitted for a “single set of ‘[c]urrent [o]ffense[s]’ forming the basis of a risk assessment.”<sup>49</sup> In *People v. Allard*, Judge Garcia held that the Defendant adequately preserved his challenges when they were raised in a hearing.<sup>50</sup>

Additionally, Judge Garcia’s majority opinions have shown a respect for judicial deference. In *People v. Powell*, the trial court precluded the defendant’s attempt to enter third-party culpability evidence as being speculative and misleading.<sup>51</sup> Judge Garcia held that the trial court appropriately used its discretion when it denied the admission of the evidence as too speculative.<sup>52</sup> In *People v. Morgan*, Judge Garcia deferred to the court’s ability to provide supplemental instructions when he upheld the defendant’s conviction after finding that the supplemental instruction that the jury verdict

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<sup>42</sup> *Stephens*, 66 N.E.3d at 1072 (quoting *People v. N.Y. Rock Corp.* 442 N.E.2d 1222, 1223 (N.Y. 1982)).

<sup>43</sup> *Stephens*, 66 N.E.3d at 1072.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* at 1076.

<sup>46</sup> *People v. Viruet*, 81 N.E.3d 828, 831 (N.Y. 2017).

<sup>47</sup> *Id.* at 831, 832.

<sup>48</sup> *Id.* at 831.

<sup>49</sup> *People v. Cook*, 75 N.E.3d 651, 651 (N.Y. 2017).

<sup>50</sup> *People v. Allard*, 63 N.E.3d 1140, 1144 (N.Y. 2016).

<sup>51</sup> *People v. Powell*, 53 N.E.3d 435, 437–38 (N.Y. 2016).

<sup>52</sup> *Id.* at 440.

must be unanimous was not coercive.<sup>53</sup>

This deference to trial courts is also present in the civil majority opinions authored by Judge Garcia. In *Columbia Cty. Support Collection Unit v. Risley*, Judge Garcia held that it was permissible for the family court, pursuant to its discretion, to sentence an individual to three consecutive sentences for three separate order of commitment violations.<sup>54</sup> In *S.L. v J.R.*, “a ‘one size fits all’ rule mandating a hearing in every custody case” was rejected, providing the family court with the discretion to bypass such a hearing under certain circumstances.<sup>55</sup> Similarly, Judge Garcia deferred to the discretion of the Commissioner of the New York State Department of Motor Vehicles in *Acevedo v. New York State Department of Motor Vehicles*.<sup>56</sup> The court determined that the denial of the petitioner’s requested reissue of their driving privileges was “a valid exercise of the Commissioner’s delegated authority.”<sup>57</sup>

Judge Garcia continued this judicial deference trend in his concurrence in *People v. Boone*. In *Boone*, Judge Garcia wrote separately to disagree with the court’s application of an automatic instruction.<sup>58</sup> In Judge Garcia’s opinion, the decision when to provide the jury with the instruction should remain firmly in the discretion of the trial judge.<sup>59</sup>

## II. DISSENTING OPINIONS

Unlike his majority decisions, Judge Garcia’s dissenting opinions have been predominately civil in nature. Eight of the twelve dissenting opinions authored by Judge Garcia were written for civil cases.<sup>60</sup> Additionally, eight of these twelve dissents included deeply divided cases and four cases where Judge Garcia was the sole dissenter.<sup>61</sup>

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<sup>53</sup> *People v. Morgan*, 68 N.E.3d 1224, 1225 (N.Y. 2016).

<sup>54</sup> *Columbia Cty. Support Collection Unit v. Risley*, 58 N.E.3d 382, 382 (N.Y. 2016).

<sup>55</sup> *S.L. v. J.R.*, 56 N.E.3d 193, 196 (N.Y. 2016).

<sup>56</sup> *Acevedo v. N.Y. State Dep’t of Motor Vehicles*, 77 N.E.3d 331, 349 (N.Y. 2017).

<sup>57</sup> *Id.* at 349.

<sup>58</sup> *People v. Boone*, 91 N.E.3d 1194, 1204–05, 1211 (N.Y. 2017) (Garcia, J., concurring).

<sup>59</sup> *Id.*

<sup>60</sup> See *B.F. v. Reprod. Med. Ass’n*, 92 N.E.3d 766, 774 (N.Y. 2017); *Lau v. Margaret E. Pescatore Parking, Inc.*, 90 N.E.3d 1276, 1276 (N.Y. 2017); *Obey v. City of New York*, 73 N.E.3d 850, 850 (N.Y. 2017); *Carlson v. Am. Int’l Grp.*, 89 N.E.3d 490, 504 (N.Y. 2017); *Makinen v. City of New York*, 86 N.E.3d 514, 520 (N.Y. 2017); *City of New York v. N.Y. State Nurses Ass’n*, 82 N.E.3d 441, 444 (N.Y. 2017); *Kimmel v. State*, 80 N.E.3d 370, 381 (N.Y. 2017); *Acme Bus Corp. v. Orange Cty.*, 68 N.E.3d 671, 677 (N.Y. 2016).

<sup>61</sup> See *People v. Reyes*, 95 N.E.3d 562, 563 (N.Y. 2018); *People v. Smith*, 92 N.E.3d 789, 791 (N.Y. 2017); *B.F.*, 30 N.Y.3d at 619; *Lau*, 90 N.E.3d at 1276; *Carlson*, 89 N.E.3d at 504;

The trend of pro-prosecution decisions in Judge Garcia's majority opinions is continued in his dissenting opinions. In *People v. Reyes*, the majority held that the record did not allow any rational jury to find that the defendant entered in to an agreement as required by the statute.<sup>62</sup> In his dissent, Judge Garcia opined that the defendant's membership in the Latin Kings, his admission of participation in retaliatory violence, and his presence at meetings when the attack on the victim was planned created a "valid line of reasoning and permissible inferences from which a rational jury could have found the elements of the crime proved beyond a reasonable doubt[.]"<sup>63</sup>

In *People v. John*, the majority in the deeply divided case held that an analyst who conducted, witnessed or supervised the creation of the DNA profile is required to testify for a laboratory report identifying the DNA profile to be admitted into evidence.<sup>64</sup> In doing so, the court determined the reports were testimonial, and thus, violated the Confrontation Clause.<sup>65</sup> In his dissent, Judge Garcia opined that the laboratory reports were nontestimonial, and thus, did not violate the Confrontation Clause.<sup>66</sup> Judge Garcia noted the Supreme Court's refusal to take the same leap as the majority, the contrariness of the rule to New York case law, and the unnecessary harm to the administration of the criminal justice system as the reasons for his dissent.<sup>67</sup>

In another divided decision, the court in *People v. Cook*, held that it was not established that the "defendant established or promoted his longstanding close relationships with the child victims for the primary purpose of victimization."<sup>68</sup> In doing so, the court reduced the defendant's assessment by twenty points from risk factor seven, and therefore, reduced the defendant from a level three sex offender evaluation to a level two sex offender.<sup>69</sup> Judge Garcia, in his dissent, disagreed with the majority's application of factor seven.<sup>70</sup> He stated that the majority's conclusion that a defendant's preexisting relationship with a victim excludes the application of risk factor

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*Makinen*, 86 N.E.3d at 520; *N.Y. State Nurses Ass'n*, 82 N.E.3d at 444; *Kimmel*, 80 N.E.3d at 381; *People v. Cook*, 75 N.E.3d 655, 661 (N.Y. 2017); *Obey*, 73 N.E.3d at 850; *Acme Bus Corp.*, 68 N.E.3d at 677; *People v. John*, 52 N.E.3d 1114, 1128 (N.Y. 2016).

<sup>62</sup> *Reyes*, 95 N.E.3d at 563.

<sup>63</sup> *Id.* at 566 (quoting *People v. Danielson*, 880 N.E.2d 1, 5 (N.Y. 2007)).

<sup>64</sup> *John*, 52 N.E.3d at 1115.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.* at 1136 (Garcia, J., dissenting).

<sup>67</sup> *Id.* at 1128–29.

<sup>68</sup> *People v. Cook*, 75 N.E.3d 655, 655 (N.Y. 2017).

<sup>69</sup> *Id.* at 655, 656.

<sup>70</sup> *Id.* at 662 (Garcia, J., dissenting).



seven “[n]ot only . . . contravene[s] the plain language of the risk factor, but it undermines the precise goal of the Guidelines: to identify offenders that present a unique threat to public safety.”<sup>71</sup> Thus, he opined that the majority’s application of the risk factor was erroneous.<sup>72</sup>

Finally, in *People v. Smith*, the court held that the trial court denied the defendant his right to counsel when he was denied the ability to confer with counsel before providing his DNA sample.<sup>73</sup> Judge Garcia, acknowledging that the better course of action would have been to adjourn the proceedings, opined that the defendant was never unrepresented at a critical stage, and thus, his constitutional right to counsel was never violated.<sup>74</sup> Judge Garcia argued that the defendant had representation during the motion practice for the buccal swap, and the later “proceeding had no bearing on the already-decided motion and therefore cannot amount to a critical stage.”<sup>75</sup>

The pro-prosecution trend reflected in Judge Garcia’s majority and dissent opinions is continued in the dissenting opinions that he joined.<sup>76</sup> Judge Garcia joined the dissent in five cases, including three criminal cases.<sup>77</sup> All three argued pro-prosecution positions, including two dissents opining that the Confrontation Clause did not apply to codefendant statements.<sup>78</sup>

However, a trend contrary to the criminal trends are present in the civil dissents authored by Judge Garcia. Six of the eight civil dissents authored were in favor of the defendant.<sup>79</sup> Similarly, Judge Garcia would have decided two four-to-three decisions in favor of the defendant.<sup>80</sup> For example, in *Obey v. City of New York*, the majority reversed the lower courts’ decision to set aside the plaintiff’s jury

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<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *People v. Smith*, 92 N.E.3d 789, 791 (N.Y. 2017).

<sup>74</sup> *See id.* at 791–92 (Garcia, J, dissenting).

<sup>75</sup> *Id.* at 796.

<sup>76</sup> *See People v. Wiggins*, 95 N.E.3d 303, 323 (N.Y. 2018); *People v. Cedeno*, 50 N.E.3d 901, 912 (N.Y. 2016); *People v. Johnson*, 49 N.E.3d 1143, 1153 (N.Y. 2016).

<sup>77</sup> *See Desrosiers v. Perry Ellis Menswear*, 90 N.E.3d 1262, 1275 (N.Y. 2017); *Ambac Assur. Co. v. Countrywide Home Loans*, 57 N.E.3d 30, 48 (N.Y. 2016); *Wiggins*, 95 N.E.3d at 323; *Cedeno*, 50 N.E.3d at 912; *Johnson*, 49 N.E.3d at 1153, 1155.

<sup>78</sup> *See Wiggins*, 95 N.E.3d at 323; *Cedeno*, 50 N.E.3d at 912; *Johnson*, 49 N.E.3d at 1153.

<sup>79</sup> *See B.F. v. Reprod. Med. Assoc.*, 92 N.E.3d 766, 774, 778 (N.Y. 2017); *Lau v. Margaret E. Pescatore Parking, Inc.*, 90 N.E.3d 1276, 1277 (N.Y. 2017); *Carlson v. Am. Int’l Grp., Inc.*, 89 N.E.3d 490, 506 (N.Y. 2017); *Makinen v. City of New York*, 86 N.E.3d 514, 520 (N.Y. 2017); *City of New York v. N.Y. State Nurses Ass’n*, 82 N.E.3d 441, 444–45 (N.Y. 2017); *Kimmel v. State*, 80 N.E.3d 370, 381 (N.Y. 2017); *Obey v. City of New York*, 73 N.E.3d at 850, 850 (N.Y. 2017); *Acme Bus Co. v. Orange Cty.*, 68 N.E.3d 671, 673, 677 (N.Y. 2016).

<sup>80</sup> *See Lau*, 90 N.E.3d at 1275, 1276–77; *Carlson*, 89 N.E.3d at 504, 506.

verdict.<sup>81</sup> As the sole dissenter, Judge Garcia, noting that the plaintiff was “high on Xanax and Klonopin” when he fell off the subway platform, opined that the plaintiff failed to make a *prima facie* case that the train caused the injury and that the operator acted negligently.<sup>82</sup>

Similarly, in *B.F. v. Reprod. Med. Assoc.*, the majority held that the statute of limitations does not begin to run in wrongful birth cases until the date of the child’s birth.<sup>83</sup> Judge Garcia opined that the majority inappropriately created a “unique circumstances” exception to the statute of limitations.<sup>84</sup> An exception that is not provided by the statute.<sup>85</sup> Therefore, Judge Garcia stated that “[t]he governing statute explicitly provides that plaintiffs’ limitations period runs from the date of the alleged malpractice, not the date of the child’s birth[,] [even] [t]hough that mandate may inflict hardship on plaintiffs.”<sup>86</sup>

Additionally, in *Kimmel v. State*, the majority held that the award of attorneys’ fees was appropriate for a plaintiff prevailing on their sexual discrimination claims.<sup>87</sup> Judge Garcia, while agreeing with the majority on the egregious and reprehensible behavior of the defendant, wrote that this behavior “does not entitle her attorneys to recoup fees under a statute that does not, and has never been used to, provide for such an award in this type of case.”<sup>88</sup> He added that while the motives to award the attorneys’ fees are understandable, the majority “establishes a rule that will have repercussions well beyond awarding fees to this particular plaintiff’s attorneys [and] does this in contradiction to the plain meaning of the statute, the unequivocal legislative history, and the interpretation given to the statute by courts and litigants for the past 28 years.”<sup>89</sup>

### III. DEEPLY DIVIDED VOTES

Judge Garcia has authored three majority opinions, one concurrence opinion, and nine dissenting opinions in deeply divided

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<sup>81</sup> See *Obey*, 73 N.E.3d at 850.

<sup>82</sup> *Id.* at 850–51.

<sup>83</sup> See *B.F.*, 92 N.E.3d at 768.

<sup>84</sup> See *id.* at 774.

<sup>85</sup> See *id.*

<sup>86</sup> *Id.* at 778.

<sup>87</sup> *Kimmel v. State*, 80 N.E.3d 370, 372 (N.Y. 2017).

<sup>88</sup> *Id.* at 381.

<sup>89</sup> *Id.* at 389.

decisions.<sup>90</sup> He has joined the dissenting opinion in five deeply divided cases.<sup>91</sup> In addition, Judge Garcia has voted with the majority in nineteen opinions that he did not author.<sup>92</sup> Thus, he has voted in a total of thirty-seven deeply divided cases.<sup>93</sup> Eighteen were criminal cases,<sup>94</sup> and nineteen were civil cases.<sup>95</sup>

The voting patterns contained within these cases have yielded interesting alliances and ideological oppositions on the court. In these deeply divided cases, Judge Jenny Rivera has only voted with Judge Garcia 18.9% of the time.<sup>96</sup> Specifically, the two judges only agreed seven times in thirty-seven cases.<sup>97</sup> Even more remarkable, this percentage drops to 11% in criminal cases.<sup>98</sup> Additionally, Judge Rivera did not join in any of the deeply divided criminal cases that Judge Garcia voted in the dissent.<sup>99</sup> Judge Rivera only agreed with

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<sup>90</sup> See *Lohnas v. Luzi*, 94 N.E.3d 892, 893 (N.Y. 2018); *People v. Reyes*, No. 6, 95 N.E.3d 562, 563 (N.Y. 2018); *People v. Smith*, 92 N.E.3d 789, 791 (N.Y. 2017); *Lau v. Margaret E. Pescatore Parking, Inc.*, 90 N.E.3d 1276, 1276 (N.Y. 2017); *Carlson v. Am. Int'l Grp., Inc.*, 89 N.E.3d 490, 504 (N.Y. 2017); *Makinen v. City of New York*, 86 N.E.3d 514, 520 (N.Y. 2017); *People v. Viruet*, 81 N.E.3d 828, 829 (N.Y. 2017); *Kimmel*, 80 N.E.3d at 381; *People v. Cook*, 75 N.E.3d 655, 661 (N.Y. 2017); *People v. Aviles*, 68 N.E.3d 1208, 1210 (N.Y. 2016); *Rushaid v. Pictet & Cie*, 68 N.E.3d 1, 13 (N.Y. 2016); *ACME Bus Corp. v. Orange Cty.*, 68 N.E. 3d 671, 677 (N.Y. 2016); *People v. John*, 52 N.E.3d 1114, 1128 (N.Y. 2016).

<sup>91</sup> See *People v. Wiggins*, 95 N.E.3d 303, 323 (N.Y. 2018); *Desrosiers v. Perry Ellis Menswear, LLC*, 90 N.E.3d 1262, 1275 (N.Y. 2017); *Ambac Assur. Corp. v. Countrywide Home Loans, Inc.*, 57 N.E.3d 30, 48 (N.Y. 2016); *People v. Cedenno*, 50 N.E.3d 901, 912 (N.Y. 2016); *People v. Johnson*, 49 N.E.3d 1143, 1155 (N.Y. 2016).

<sup>92</sup> See *Kelly v. Dinapoli*, 94 N.E.3d 444, 455 (N.Y. 2018); *People v. Hardee*, 88 N.E.3d 354, 361 (N.Y. 2017); *Prometheus Realty Grp. Corp. v. New York City Water Bd.*, 92 N.E.3d 778, 788 (N.Y. 2017); *People v. Arjune*, 89 N.E.3d 1207, 1227 (N.Y. 2017); *People v. Sivertson*, 77 N.E.3d 349, 357 (N.Y. 2017); *People v. Anderson*, 74 N.E.3d 639, 643 (N.Y. 2017); *O'Brien v. Port Auth. of N.Y. & N.J.*, 74 N.E.3d 307, 318 (N.Y. 2017); *People v. Vining*, 71 N.E.3d 563, 573 (N.Y. 2017); *Flo & Eddie, Inc. v. Sirius XM Radio, Inc.*, 70 N.E.3d 936, 970 (N.Y. 2016); *Justinian Capital SPC v. WestLB AG*, 65 N.E.3d 1253, 1263 (N.Y. 2016); *Pasternack v. Lab. Corp. of Am. Holdings*, 59 N.E.3d 485, 500 (N.Y. 2016); *People v. Sincerbeaux*, 57 N.E.3d 1076, 1083 (N.Y. 2016); *Aetna Health Plans v. Hanover Ins. Co.*, 56 N.E.3d 213, 222 (N.Y. 2016); *Wally v. New York City Health and Hosp. Co.*, 57 N.E.3d 1067, 1073 (N.Y. 2016); *People v. Davidson*, 55 N.E.3d 1027, 1036 (N.Y. 2016); *Sherman v. N.Y. State Thruway Auth.*, 52 N.E.3d 231, 235 (N.Y. 2016); *People v. Badalamenti*, 54 N.E.3d 32, 50 (N.Y. 2016); *Aoki v. Aoki*, 49 N.E.3d 1156, 1164 (N.Y. 2016); *People v. Gray*, 49 N.E.3d 1180, 1189 (N.Y. 2016).

<sup>93</sup> See *infra* appendices.

<sup>94</sup> See *Hardee*, 88 N.E.3d at 361; *Arjune*, 89 N.E.3d at 1227; *Sivertson*, 77 N.E.3d at 357; *Anderson*, 74 N.E.3d at 649; *Vining*, 71 N.E.3d at 572; *Sincerbeaux*, 57 N.E.3d at 1086; *Davidson*, 55 N.E.3d at 1036; *Badalamenti*, 54 N.E.3d at 50; *Gray*, 49 N.E.3d at 1189.

<sup>95</sup> See *Kelly*, 94 N.E.3d at 455; *Prometheus Realty Grp. Corp.*, 92 N.E.3d 778 at 780–81; *O'Brien*, 74 N.E.3d at 318; *Sirius XM Radio*, 70 N.E.3d at 970; *Justinian Capital*, 65 N.E.3d at 1263; *Pasternack*, 59 N.E.3d at 500; *Aetna Health Plans*, 56 N.E.3d at 222; *Wally*, 57 N.E.3d at 1073; *Sherman*, 52 N.E.3d at 232; *Aoki*, 49 N.E.3d at 1164.

<sup>96</sup> See *infra* appendices.

<sup>97</sup> *Id.*

<sup>98</sup> See *infra* Appendix 1.1, 1.2, 1.3, 2.1, 2.2, 2.3.

<sup>99</sup> See *infra* Appendix 2.1, 2.2, 2.3.

Judge Garcia on two of the eighteen deeply divided criminal cases.<sup>100</sup> This drastic opposition in voting reveals an ideological opposition between the two judges.

Similarly, while in a smaller sample size of cases, Judge Rowan Wilson has also repeatedly voted against Judge Garcia. In the deeply divided cases where both judges have voted, Judge Wilson has only voted with Judge Garcia 22.2% of the time.<sup>101</sup> The two Court of Appeals judges have only agreed on two criminal cases.<sup>102</sup> Similar to Judge Rivera, Judge Wilson did not join Judge Garcia in any criminal case dissents.<sup>103</sup> While there is more agreement between the two judges in civil cases, the judges only concurred in one majority opinion and one dissenting opinion.<sup>104</sup> The dissenting opinion was not authored by either of the judges.<sup>105</sup> This voting pattern shows that Judge Wilson also has an ideological opposition to Judge Garcia, especially in criminal cases.

In contrast to Judge Rivera and Judge Wilson, Judge Garcia has joined former Judge Eugene Pigott in the majority of his deeply divided votes. Overall, Judge Garcia has voted on the same side as Judge Pigott in 77.8% of deeply divided cases where both judges voted.<sup>106</sup> This includes the judges agreeing on seven out of eight criminal cases, including three out of three criminal dissents.<sup>107</sup> Similarly, the two judges voted together in seven out of ten civil decisions.<sup>108</sup> Thus, this similarity in voting patterns shows that Judge Garcia had an ideological alliance with Judge Pigott. This is not surprising since Judge Garcia is the lone Republican on the current court and Judge Pigott was the last Republican on the court prior to Judge Garcia.<sup>109</sup>

While Judge Pigott's replacement, Judge Wilson, does not share

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<sup>100</sup> See *People v. Viruet*, 81 N.E.3d 828, 835 (N.Y. 2017); *People v. Gray*, 49 N.E.3d 1180, 1189 (N.Y. 2016).

<sup>101</sup> See *infra* Appendix 1.2, 1.3, 2.2, 2.3, 3.2, 3.3, 4.2.

<sup>102</sup> See *People v. Sivertson*, 77 N.E.3d 349, 357 (N.Y. 2017); *People v. Anderson*, 74 N.E.3d 639, 643 (N.Y. 2017).

<sup>103</sup> See *infra* Appendix 2.2, 2.3.

<sup>104</sup> See *infra* Appendix 3.2, 3.3, 4.2.

<sup>105</sup> See *infra* Appendix 4.2; see also *Desrosiers v. Perry Ellis Menswear*, 90 N.E.3d 1262 (N.Y. 2017).

<sup>106</sup> See *infra* Appendix 1.1, 2.1, 3.1, 4.1.

<sup>107</sup> See *infra* Appendix 1.1, 2.1.

<sup>108</sup> See *infra* Appendix 3.1, 4.1.

<sup>109</sup> See Associated Press, *Michael Garcia Confirmed as Judge on New York Court of Appeals*, N.Y. TIMES (Feb. 8, 2016), <https://www.nytimes.com/2016/02/09/nyregion/michael-garcia-confirmed-as-judge-on-new-york-court-of-appeals.html>; Michael Cooper, *Pataki Appoints Fifth Republican to Highest Court*, N.Y. TIMES (Aug. 19, 2006), <http://www.nytimes.com/2006/08/19/nyregion/19judge.html>.

the same ideological similarities as Judge Pigott, the newest judge on the court, Judge Paul Feinman, has shown an early disposition to join Judge Garcia in deeply divided cases. Judge Feinman has voted with Judge Garcia in 66.7% of the deeply divided cases that both judges voted on.<sup>110</sup> This ideological alliance is even stronger in criminal cases, where judge Feinman has joined Judge Garcia in two of two majority opinions and two of three dissenting opinions.<sup>111</sup> While it is still early to definitively state that Judge Garcia and Judge Feinman share an ideological alliance, Judge Feinman has joined Judge Garcia's votes more than any other judge currently on the court.<sup>112</sup>

#### IV. CONCLUSION

In his two years on the Court of Appeals, Judge Garcia has been an active author of opinions. Several trends can be gleaned from the opinions authored by Judge Garcia. First, the majority opinions authored by Judge Garcia on criminal cases reflect a trend of pro-prosecution decisions. This trend is further supported by his concurrence and his dissenting opinions. Opinions authored by Judge Garcia reflect a respect for the discretion of the court. These trends are likely shaped by his experiences as a prosecutor and clerk for the late Judge Kaye. Additionally, a pro-defendant trend has taken shape in the dissenting opinions authored by Judge Garcia in civil cases. Furthermore, ideological oppositions have developed between Judge Garcia and Judges Rivera and Wilson. Judge Garcia had the strongest ideological alliance with former Judge Pigott, and since his retirement, Judge Feinman has emerged as the judge with the strongest ideological alliance with Judge Garcia.

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<sup>110</sup> See *infra* Appendix 1.3, 2.3, 3.3, 4.2.

<sup>111</sup> See *infra* Appendix 1.3, 2.3.

<sup>112</sup> See *infra* Appendix 1.3, 2.3, 3.3, 4.2.

**Appendix 1.1****Criminal cases: Garcia voted in majority**

Case	DiFiore	Rivera	Stein	Fahey	Pigott	Abdus-Salaam
People v. Sincerbeaux	Yes	No	Yes	DNV	No	Yes
People v. Vining	No	No	Yes	Yes	N/A	Yes
People v. Davidson	DNV	No	Yes	Yes	Yes	No
People v. Gray	Yes	Yes	No	No	Yes	Yes
People v. Badalamenti	Yes	No	No	Yes	Yes	No
People v. Aviles	Yes	No	Yes	No	Yes	Yes
Total concurring votes <sup>113</sup>	4 <sup>114</sup>	1	4	3 <sup>115</sup>	4 <sup>116</sup>	4

**Appendix 1.2****Criminal cases: Garcia voted in majority**

Case	DiFiore	Rivera	Stein	Fahey	Abdus-Salaam	Wilson
People v. Anderson	Yes	No	Yes	No	Yes	Yes

**Appendix 1.3****Criminal Cases: Garcia voted in majority**

Case	DiFiore	Rivera	Stein	Fahey	Wilson	Feinman
People v. Sivertson	Yes	No	No	Yes	Yes	N/A
People v. Hardee	Yes	No	No	Yes	No	Yes
People v. Arjune	Yes	No	Yes	Yes	No	Yes
People v. Viruet	Yes	Yes	No	Yes	No	N/A
Total concurring votes <sup>117</sup>	4	1	1	4	1	2 <sup>118</sup>

<sup>113</sup> Out of 6 cases.<sup>114</sup> Out of 5 cases.<sup>115</sup> Out of 5 cases.<sup>116</sup> Out of 5 cases.<sup>117</sup> Out of 4 cases.<sup>118</sup> Out of 2 cases.

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**Appendix 2.1****Criminal cases: Garcia voted in dissent**

Case	DiFiore	Rivera	Stein	Fahey	Pigott	Abdus-Salaam
People v. Johnson	No	No	Yes	No	Yes	No
People v. Cedenó	No	No	No	No	Yes	No
People v. John	No	No	No	No	Yes	Yes
Total concurring votes <sup>119</sup>	0	0	1	0	3	1

**Appendix 2.2****Criminal cases: Garcia voted in dissent**

Case	DiFiore	Rivera	Stein	Fahey	Abdus-Salaam	Wilson
People v. Cook	No	No	No	Yes	No	No

**Appendix 2.3****Criminal cases: Garcia voted in dissent**

Case	DiFiore	Rivera	Stein	Fahey	Wilson	Feinman
People v. Wiggins	Yes	No	No	No	No	Yes
People v. Smith	No	No	Yes	Yes	No	No
People v. Reyes	No	No	No	No	No	Yes
Total concurring votes <sup>120</sup>	1	0	1	1	0	2

**Appendix 3.1****Civil cases: Garcia voted in majority**

Case	DiFiore	Rivera	Stein	Fahey	Pigott	Abdus-Salaam
Sherman v. New York State Thruway Auth.	Yes	No	Yes	No	Yes	No
Wally G v. New York City Health and Hospitals Co.	Yes	No	Yes	No	Yes	No
Aetna Health Plans v. Hanover Ins. Co.	Yes	No	Yes	No	Yes	Yes
Justinian Capital SPC v. WestLB AG	Yes	Yes	No	Yes	No	Yes
Aoki v. Aoki	Yes	No	No	Yes	Yes	Yes
Pasternack v. Laboratory Corp. of America Holdings	Yes	No	No	No	Yes	Yes
Flo & Eddie, Inc. v. Sirius XM	DNV	No	Yes	Yes	Yes	No

<sup>119</sup> Out of 3 cases.<sup>120</sup> Out of 3 cases.

Radio, Inc.						
Al Rushaid v. Pictet & Cie	No	Yes	No	Yes	No	Yes
Total concurring votes <sup>121</sup>	6 <sup>122</sup>	2	4	4	6	5

### Appendix 3.2

#### Civil cases: Garcia voted in majority

Case	DiFiore	Rivera	Stein	Fahey	Abdus-Salaam	Wilson
O'Brien v. Port Authority of New York and New Jersey	Yes	No	Yes	No	Yes	No

### Appendix 3.3

#### Civil cases: Garcia voted in majority

Case	DiFiore	Rivera	Stein	Fahey	Wilson	Feinman
Kelly v. Dinapoli	Yes	Yes	Yes	No	No	Yes
Prometheus Realty Group Corp. v. New York City Water Board	No	No	Yes	Yes	Yes	Yes
Lohnas v. Luzi	No	Yes	No	Yes	No	Yes
Total concurring votes <sup>123</sup>	1	2	2	2	1	3

### Appendix 4.1

#### Civil cases: Garcia voted in dissent

Case	DiFiore	Rivera	Stein	Fahey	Pigott	Abdus-Salaam
Ambac Assur. Co. v. Countrywide Home Loans	DNV	Yes	No	No	No	No
Acme Bus Co. v. Orange County	No	No	No	No	Yes	No
Total concurring votes <sup>124</sup>	0 <sup>125</sup>	1	0	0	1	0

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<sup>121</sup> Out of 8 cases.

<sup>122</sup> Out of 7 cases.

<sup>123</sup> Out of 3 cases.

<sup>124</sup> Out of 2 cases.

<sup>125</sup> Out of 1 case.



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**Appendix 4.2**

Civil cases: Garcia voted in dissent

Case	DiFiore	Rivera	Stein	Fahey	Wilson	Feinman
Desrosiers v. Perry Ellis Menswear	No	No	Yes	No	Yes	No
Kimmel v. State	No	No	Yes	DNV	No	N/A
Carlson v. American International Group	Yes	No	Yes	DNV	No	No
Makinen v. City of New York	No	No	Yes	No	No	No
Lau v. Margaret E. Pescatore Parking, Inc.	Yes	No	No	No	No	Yes
Total concurring votes <sup>126</sup>	2	0	4	0 <sup>127</sup>	1	1 <sup>128</sup>

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<sup>126</sup> Out of 5 cases.

<sup>127</sup> Out of 3 cases.

<sup>128</sup> Out of 4 cases.