

# AVA AYERS

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## EXPERIENCE

### **Albany Law School** **2016—present**

*2021-Present: Associate Professor*

*2018-2021: Director of the Government Law Center and Assistant Professor*

*2016-2018: Director of the Government Law Center and Visiting Assistant Professor*

Classes taught: Legislation and Statutory Interpretation; Administrative Law; Law of Government; Professional Responsibility; Lawmaking Practicum (a seminar on criminal justice and the legislative process).

As Director of the Government Law Center, supervised staff of 6-8 and expert volunteers providing nonpartisan research and analysis to help state and local policymakers better serve their communities. Issues included police reform, immigration, rural renewal, and others.

### **New York Attorney General's Office, Appeals & Opinions Bureau** **2007—2016**

*Senior Assistant Solicitor General (2014-2016); Assistant Solicitor General (2007-2014).*

Litigated, in federal and state appellate courts, cases about administrative law; immigration law; civil rights; environmental law; civil procedure; and many other subjects. From 2014-2016, primary responsibility was supervising and editing other attorneys' work.

### **Hon. Gerard E. Lynch** **2006—2007**

*Law clerk, U.S. District Court for the Southern District of New York.*

### **Hon. Sonia Sotomayor** **2005—2006**

*Law clerk, U.S. Court of Appeals for the Second Circuit.*

## EDUCATION AND EARLIER EXPERIENCE

### **Georgetown University Law Center, J.D., *summa cum laude*** **2002—2005**

*Honors:* Francis E. Lucey, S.J. Award (highest grade-point average in class)

Order of the Coif

Public Interest Law Scholar (three-year partial scholarship)

Int'l Academy of Trial Lawyers Assoc. Award (for work in asylum clinic)

Pro Bono Service Award (500+ pro bono hours)

Graduation Speaker (selected by vote of classmates)

*Journal:* Articles Editor, *Georgetown Immigration Law Journal*

*Internships:* U.S. Department of State, Office of the Legal Adviser, summer 2004 (Bureau of Human Rights & Refugees and Bureau of Claims & Investment Disputes)

U.S. Senate Judiciary Committee, Constitution Subcommittee (Office of Sen. Russ Feingold), summer 2003 and three semesters during 2004—2005

### **Human Rights Watch** **1999—2002**

*Special Assistant to the General Counsel.* Researched human rights and international humanitarian law issues. Helped coordinate legal training sessions and policy discussions.

### **Vassar College, A.B.** **1994—1998**

*Honors:* Phi Beta Kappa; departmental honors in both majors (Literature and Religion).

## ***LAW REVIEW ARTICLES***

***Sanctuary Without Resistance*** (forthcoming) (describing local and state government policies that, despite announcing noncooperation with federal immigration enforcement, avoid criticism of the federal government, and arguing that these policies implicitly legitimize aspects of the immigration system they refuse to cooperate with).

***The Impossibility of Local Police Reform***, FORDHAM URBAN LAW J. 2023 (forthcoming) (explaining how the structure of local government and the distribution of knowledge and expertise at the local level makes transformational change in policing effectively impossible).

***Voting as Exclusion***, 90 FORDHAM L. REV. 373 (2021) (symposium piece) (describing two common narratives in rhetoric about voting—a narrative in which voting demonstrates civic virtue, and a narrative in which voting is a celebration of inclusion and belonging—and argues that voting also functions to exclude marginalized groups, especially noncitizens)

***Missing Immigrants in the Rhetoric of Sanctuary***, 2021 WIS. L. REV. 473 (2021) (study of how local and state governments justify “sanctuary” policies, examining the omission of justifications that invoke immigrants’ well-being and rights)

***Discriminatory Cooperative Federalism***, 65 VILL. L. REV. 1 (2020) (examines statutes in which Congress purports to give state and local governments the choice whether to treat noncitizens differently from citizens)

***Federalism and the Right to Decide Who Decides***, 63 VILL. L. REV. 567 (2018) (examines federal statutes that preempt all state action except legislative enactments, thus forcing states to act, if at all, through their legislatures; and argues that Congress violates the anti-commandeering doctrine when it uses preemption to force decisions into state legislatures)

***Justice Sotomayor and the Sense of Respect***, 81 ALB. LAW REV. 721 (2018) (introduction to Justice Sotomayor’s address to Albany Law School students)

***The Half-Virtuous Integrity of Atticus Finch***, 86 MISSISSIPPI L.J. 1 (2016) (arguing that lawyers are mistaken in praising Atticus for being true to himself, and that other characters in *To Kill a Mockingbird* are ethically praiseworthy because they are *not* true to themselves)

***What if Legal Ethics Can’t Be Reduced to a Maxim?***, 26 GEORGETOWN J. LEGAL ETHICS 1 (2013) (arguing that legal ethicists should stop trying to create maxims that will solve ethical dilemmas in which values conflict, and ask instead what capacities are needed to act well in such situations)

***The Lawyer’s Perspective: The Gap between Individual Decisions and Collective Consequences in Legal Ethics***, 36 J. LEGAL PROFESSION 77 (2011) (arguing that legal ethicists should help lawyers identify the ways in which their work can be intrinsically valuable—that is, valuable apart from their consequences for the justice system in general)

***International Law as a Tool of Constitutional Interpretation in the Early Immigration Power Cases***, 19 GEORGETOWN IMMIGRATION L.J. 125 (2005) (student note) (discussing the use of

customary international law as persuasive authority in the Supreme Court cases that established federal power over immigration)

### **BOOK**

**A STUDENT’S GUIDE TO LAW SCHOOL** (University of Chicago Press 2013) (a guide to the intellectual and practical challenges of law school, explaining the elements of legal reasoning and the practical judgment and other virtues that matter in practice)

### **OTHER PUBLICATIONS**

Co-authored with Fiona Beaton, John Pickering, and Daniel Kayajian: ***Thud-Tempters and Mockingbirds: A Cognitive-Linguistic Approach to Acoustic Assumptions***, PERSPECTIVES OF THE AMERICAN SPEECH-LANGUAGE-HEARING ASSOCIATION (ASHA) SPECIAL INTEREST GROUPS (2021) (study of transgender voice-feminization methodologies)

Primary Drafter, ***Report of the Civilian Oversight Working Group, Police Reform & Reinvention Collaborative*** (City of Albany, January 2021) (recommendations for reform of police transparency, oversight, and accountability in the City of Albany)

Co-Authored with Jerry H. Goldfeder, Wilfred U. Codrington III, James A. Gardner, Deborah Pearlstein, Richard H. Pildes, Jed Shugerman, and John Hardin Young, ***Report of the New York State Bar Association Task Force on the Presidential Election*** (Oct. 20, 2020), <https://nysba.org/app/uploads/2020/10/Final-Report-with-Cover-10-20-20-1.pdf>

***What Is a ‘Sanctuary’ City?***, *Municipal Matters* (Fall 2018)

***What Happens to Abortion Rights in New York If Brett Kavanaugh Is Confirmed?*** (Rockefeller Institute of Government Policy Brief, 2018), available at <http://rockinst.org/issue-area/what-happens-to-abortion-in-new-york-if-brett-kavanaugh-is-confirmed/>

***Immigrants and Public Benefits: What Must States and Localities Provide?***, (Government Law Center Publication, July 2018), available at <http://www.albanylaw.edu/centers/government-law-center/Immigration/Documents/GLC-Immigration-Explainer.pdf>

***Sanctuaries: An Explainer*** (Government Law Center publication, April 2018) (the first in a series of “explainers” aimed at helping state and local policymakers understand the immigration-related decisions that face them, and the laws that apply to those decisions)

***Protections in the New York State Constitution Beyond the Federal Bill of Rights*** (Government Law Center publication, April 2017) (co-authored and co-edited) (compilation of short pieces by invited contributors explaining ways in which the New York Constitution offers protections greater than their federal equivalents)

***One Hundred and Six Ideas for Constitutional Change*** (Government Law Center publication, Sept. 2017) (co-edited) (compilation of ideas for topics that might be addressed at a New York State constitutional convention)

## ***DISCUSSED IN***

Jill Family, *Why Don't Policymakers Speak Out About Migrants?*, reviewing Ava Ayers, *Missing Immigrants in the Rhetoric of Sanctuary*, 2021 WIS. L. REV. 473 (2021); JOTWELL (Feb. 23, 2022), <https://lex.jotwell.com/why-dont-policymakers-speak-out-about-migrants/>

## ***ACADEMIC PRESENTATIONS***

*Speaker*, faculty workshop, University of Arizona Rogers College of Law, April 13, 2023.

*Panelist*, “Local Administrative Law,” panel at “Local Government Structure Through a Legal Lens: Conversations of Law and Local Governance,” Fordham Urban Law Journal’s Cooper-Walsh Colloquium (Oct. 14, 2022)

*Panelist*, “Legitimacy & Resistance, Identity & Exclusion: the Ambiguities of Citizenship,” panel at the Law and Society Association Annual Meeting (July 16, 2022)

*Discussant*, “Enforcement and Exclusion: Sovereignty and the Social Control of Migrants,” panel at the Law and Society Association Annual Meeting (July 16, 2022)

*Panelist*, “Legitimacy & Resistance, Identity & Exclusion: The Ambiguities of Citizenship,” panel at the Law and Society Association Annual Meeting (May 30, 2022)

*Panelist*, “The Polarization of SCOTUS in the 2020-2021 Term,” panel at Siena College with Hon. Mae D’Agostino, Don Levy, and Ilya Somin (Apr. 27, 2022)

*Panelist*, “Grand Questions of the U.S. Constitution,” an *Albany Law Review* panel discussion (Apr. 27, 2021) (with Tom Ginsburg, Jessica Knouse, Hon. Rowan Wilson, and Evan Wolfsohn)

*Panelist*, “Recent Developments in Arbitrary and Capricious Review: Insights from Immigration Law,” American Bar Association Administrative Law Conference (Nov. 20, 2020) (with Shruti Rana, Shalini Ray, and Amer Ahmed)

*Panelist*, “Missing Immigrants in the Rhetoric of Sanctuary,” panel at the Law and Society Association Annual Meeting (May 28, 2020)

*Presenter*, “Professional Identity and the Hidden Curriculum,” an Albany Law School Gathii Workshop (Dec. 4, 2019, and Jan. 22, 2020)

*Presenter*, work in progress, “Sanctuary Values,” at Marquette Law School Junior Faculty Works-in-Progress Conference (Oct 4, 2019)

*Presenter*, incubator proposal, “Sanctuary Values,” at Emerging Immigration Law Scholars conference (Brigham Young University Law School, June 9, 2019)

*Panelist*, “Rural Access to Justice,” at American Association of Law Schools Annual Meeting, New Orleans (Jan. 5, 2019)

*Presenter*, incubator proposal, “Can Congress Authorize Discrimination Against Noncitizens?” at Drexel Law School conference on “Immigration Law In, Through, and Beyond Moments of Distress” (Immigration Law Scholars and Teachers Workshop, May 26, 2018)

*Facilitator*, workshop on “Strategies for Sanctuary Spaces in the Age of Deportations,” at Harvard Law School “Ideas in Action Hackathon” (Apr. 20, 2018) (facilitated group discussion on health-care facilities’ response to immigration enforcement)

*Moderator*, panel on “Civilian Oversight of Police,” at *Albany Government Law Review* symposium on “Cracks in the U.S. Constitution: Broken Windows Policing and the Criminalization of Children” (Mar 8, 2018)

*Panelist* on “Lawyering with a Healthy Mind,” Albany Law School, Wellness Week series (Mar. 5, 2018)

*Moderator*, panel on “Inclusion and Exclusion: Renewal, Displacement, and Community Transformation” at Albany Law School conference on “Community Renewal and Its Discontents,” (Nov. 3, 2017)

*Moderator*, Albany Law Review symposium on “Sanctuary Cities” (Nov. 9, 2017)

*Co-Moderator*, “The Honorable Sonia Sotomayor: A Special Kate Stoneman Event,” Albany Law School (Apr. 3, 2017)

### ***COMMUNITY PRESENTATIONS***

*(“Presenter” = solo presentation; “co-presenter” or “panelist” = with others.)*

*Panelist*, “Screening and Panel Discussion of ROOTED OUT by Julie Casper Roth,” (discussion of a film that follows the experience of two men denied a marriage license in their hometown at Proctors Theater, sponsored by WMHT Public Media) (Oct. 3, 2022)

*Panelist*, “Introduction to Voting Rights” (Presentation for the Albany NAACP, with Rep. Paul Tonko and Gregory Owens) (Feb. 24, 2022)

*Panelist*, “[A Seat at the Table: Engaging Stakeholders to Advance Policing Reform](#)” (Webinar for the American Bar Association’s Legal Education Police Practices Consortium, October 6, 2021)

*Panelist*, “Police Reform: A Statewide Perspective,” (N.Y.S. Pub. Employer Labor Relations Assoc. annual conference, Sept. 29, 2021)

*Panelist*, “First Mondays: Eviction Moratoriums” (Albany Law School, Sept. 13, 2021)

*Presenter*, “Article 78 and the Duty to Be Reasonable” (CLE session for the judges and staff of the Appellate Division, Third Department, June 9, 2021)

*Presenter*, “One View of Being Trans” (presentation to staff of New York State United Teachers, June 2, 2021)

*Co-Moderator and Panelist*, “Litigating an Impeachment Trial of a U.S. President,” a New York State Bar Association discussion with Rep. Stacey Plaskett (Apr. 8, 2021)

*Panelist*, “Trans Lawyers’ Stories: A Roundtable Discussion on Discrimination in the Legal Profession,” (Law.com webinar, reported at [“They Certainly Don’t See Trans People as People’: Trans Lawyers Discuss Their Fight for Acceptance in the Legal Industry for Law.com](#), Law.com, Mar. 11, 2021).

*Panelist*, “Policing Polices in 2021 and Beyond: Training, Reform, Reinvention” (New York Association of Counties webinar, Feb. 23, 2021)

*Panelist*, “Civilian Review Boards & Police: What Works & What Doesn’t” (New York State Bar Association Annual Meeting, January 25, 2021)

*Panelist*, “A Voting Rights Discussion: Celebrating 100 Years of Women’s Right to Vote and Ongoing Challenges,” Oct. 22, 2020 (Albany Law School’s American Constitution Society, Women’s Law Caucus, and Government Law Society, with Hon. Leslie Stein, Hon. Christina Ryba, and Prof. Mary Lynch)

*Panelist*, “Community Forum: Defunding Police in the Capital Region” (sponsored by New York Civil Liberties Union, July 23, 2020 (with Alice Green, Rob Worden, and Frank Wiley)

*Presenter*, CLE, “The Rural Justice Gap,” at the Association of Towns Annual Meeting (Feb. 17, 2020)

*Presenter*, CLE, “The Rural Justice Gap,” at New York State Senate (Dec. 4, 2019)

*Presenter*, “The Rural Justice Gap,” presentation to the New York State Commission on Parental Representation (Nov. 12, 2019)

*Presenter*, CLE session on “The Uncertain Past, Present, and Future of Administrative Law,” at the Appellate Division, Third Department (Sept. 27, 2019)

*Presenter*, CLE session on “County Interactions with Immigrants,” at the annual meeting of the New York State Association of Counties (Sept. 17, 2019)

*Presenter*, CLE session on “County Interactions with Immigrants,” at the annual meeting of the County Attorneys’ Association of the State of New York (May 20, 2019)

*Co-Presenter*, CLE session on “Research: What Does the Court Want?” (co-presenter with Hon. Sharon Aarons and Assistant Attorney General Christopher Liberati-Conant), for the Albany County Bar Association (May 14, 2019)

*Moderator*, panel on “What’s Needed for Rural Renewal,” Government Law Center’s Anderson Breakfast Seminar (May 14, 2019)

*Presenter*, CLE session on “What Cities and Villages Need to Know About Immigration Law,” at New York Conference of Mayors annual meeting (May 5, 2019)

*Presenter*, training on “Legal Writing for Non-Lawyers” for the Public Service Workshops Program (a project of the Governor’s Office on Employee Relations) (May 1, 2019)

*Presenter*, CLE session on “Local Governments’ Role in Immigration Law,” at New York Association of Towns conference (Feb. 19, 2019)

*Presenter*, CLE session on “The Legal Ethics of To Kill a Mockingbird,” at New York Association of Towns conference (Feb. 18, 2019)

*Moderator*, panel on “Immigration Policy and Horse Racing,” Albany Law School Saratoga Institute (Aug. 7, 2018)

*Panelist*, “State Constitutions in the Era of a Shifting Supreme Court,” at Rockefeller Institute of Government, Albany (July 23, 2018); video available at <http://rockinst.org/blog/state-constitutions-in-the-era-of-a-shifting-supreme-court/>

*Co-Presenter*, CLE session on “A Moving Target: Federal Immigration Policy and State Responses” for lawyers in public service sponsored by the New York State Attorney General’s Office (May 14, 2018)

*Moderator and Panelist*, Government Law Center’s Anderson Breakfast Seminar on “State and Local Power Over Immigration” (Apr. 3, 2018)

*Presenter*, CLE session on “Governments, Lawyers, and the Ethics of Disobedience” at New York Association of Towns conference (Feb. 19, 2018)

*Presenter*, CLE session on “Civility and Other Ethical Problems,” at Albany Law School CLE for Recent Graduates (Nov. 18, 2017)

*Presenter*, CLE session on legal ethics, Albany Law School CLE in Saratoga Program (Aug. 25, 2017)

*Moderator*, panel on “Immigration Policy and Horse Racing,” Albany Law School Saratoga Institute (Aug. 8, 2017)

*Presenter*, CLE session on “Municipal Conflicts of Interest and Ethical Challenges in the Workplace” at New York County Attorneys’ Association conference (May 23, 2017)

*Co-Presenter*, CLE session on “Judicial Review of State Agencies” at New York State Bar Association’s Local and Government Law Section Spring Forum (with Hon. Bernard Malone) (May 5, 2017)

*Panelist*, “Using the State Constitution and International Law to Fight Injustice,” at Albany Law School conference on “Advocacy and Activism Today” (Feb. 25, 2017)

## ***GUEST-TEACHING***

*Course title appears first, in italics*

*Immigration Law*, Prof. Mary Armistead (Albany Law, Sept. 1, 2021) (session on statutory interpretation)

*Real Democracy*, Prof. Bob Turner (Skidmore College, Dec. 6, 2021) (session on police reform)

Albany Law School Orientation, “How to Take Extremely Useful Notes” (presentation; August 2021; repeated January 11, 2022)

*Immigration Law Clinic*, Prof. Sarah Rogerson (Albany Law, Apr. 8, 2020) (session on border developments and local governments’ role)

*Immigration Law*, Prof. Mary Armistead (Albany Law, Aug. 28, 2019) (session on statutory interpretation)

*Writing and Critical Inquiry*, Prof. Marcie Newton (U. Albany, Mar. 25, 2019) (session on legal reasoning and argument for students in the 3+3 program)

*Writing and Critical Inquiry*, Prof. Marcie Newton (U. Albany, Oct. 22, 2018) (session on legal reasoning and argument for students in the 3+3 program)

*Writing and Critical Inquiry*, Prof. Marcie Newton (U. Albany, Mar. 9, 2018) (session on legal reasoning and argument for students in the 3+3 program)

*Immigration Law*, Prof. Christian Sundquist (Albany Law School, Jan. 22, 2018) (session on statutory interpretation)

*Writing and Critical Inquiry*, Prof. Marcie Newton (U. Albany, fall 2017) (session on legal reasoning and argument for students in the 3+3 program)

*Writing and Critical Inquiry*, Prof. Marcie Newton (U. Albany, spring 2017) (session on legal reasoning and argument for students in the 3+3 program)

*Supreme Court Seminar*, Prof. Steve Gottlieb (Albany Law School, spring 2017) (session on Justice Sotomayor)

*Law and Literature*, Prof. Jim Redwood (Albany Law School, spring 2017) (session on *To Kill a Mockingbird*)

*Law School Success II*, Prof. Joe Buffington (Albany Law School, spring 2017—taught each of three sections) (session on shame)

*Appellate Advocacy*, Prof. Rosemary Queenan (Albany Law School, Oct. 26, 2016) (session on appellate ethics)



*Appellate Advocacy*, Prof. Victor Paladino (Albany Law School, Feb. 25, 2016) (session on appellate ethics)

*Appellate Advocacy*, Prof. Victor Paladino (Albany Law School, Feb. 5, 2015) (session on appellate ethics)

### **COMMUNITY SERVICE**

*Commissioner*, New York State Commission on Ethics and Lobbying in Government (nominated by Attorney General Tish James on February 7, 2023; confirmed by the [New York State Independent Review Committee](#) on February 14, 2023)

*Team Member*, “Elections Future Project,” a collaboration between the Government Law Center, the Center for Technology in Government at the University at Albany, and the International Data Corporation (IDC) to investigate possible reforms to voter-registration procedures in New York State. I helped author the legal-analysis section of the report; that section remains confidential (2021)

*Member*, New York State Bar Association Task Force on Election Reform (2021-2022)

*Member*, Program Review Committee, The Program on Law and State Government, Robert H. McKinney School of Law, Indiana University-Purdue University Indianapolis (2021) (committee appointed to review and assess law school’s program)

*Member*, Civilian Complaint Review Boards Committee, New York State Bar Association Task Force on Racial Injustice and Police Reform (2020-2021)

*Co-Chair*, Civilian Oversight Committee, City of Albany Policing Reform and Reinvention Collaborative (2020-2021)

*Member*, New York State Bar Association Task Force on the Presidential Election (2020-2021)

*Member*, New York State Bar Association Task Force on Rural Justice (2018-2019)

### **SELECTED SIGNIFICANT BRIEFS AND ARGUMENTS**

#### ***State Courts***

*In re Cesar Vargas*, 131 A.D.3d 4 (N.Y. App. Div. 2d Dep’t 2015) (amicus brief in support of a beneficiary of Deferred Action for Childhood Arrivals program, who sought admission to the bar; first case in the nation to recognize state’s right to admit DACA beneficiaries to licensure despite federal statute’s apparent restriction of that right)

*Association for a Better Long Island v. N.Y.S. Dep’t of Envtl. Conservation*, 23 N.Y.3d 1 (2014) (on what interest a petitioner must invoke to establish standing to challenge environmental regulations on procedural grounds, e.g., failure to hold a public hearing)

*N.Y.S. Superfund Coalition v. N.Y.S. Dep't of Env'tl. Conservation*, 18 N.Y.3d 289 (2011) (scope of cleanup operations under New York's Superfund statute)

*Feminists Choosing Life v. Empire State Stem Cell Board*, 87 A.D.3d 47 (3d Dep't 2011) (whether funding for stem cell research violates ban on human cloning)

*Blue Line Council v. Adirondack Park Agency*, 86 A.D.3d 756 (3d Dep't 2011) (challenge to multiple environmental regulations; whether municipalities had standing and capacity)

*Dagvadorj v. DeFleur*, 70 A.D.3d 1275 (3d Dep't 2010) (whether federal law required college to report that student's work at another school was not "on-campus employment" and therefore that student violated his student visa)

*Save the Pine Bush, Inc. v. Common Council of the City of Albany*, 13 N.Y.3d 297 (2009) (on whether recreational users of a natural resource have standing to sue to protect it from environmental harms)

*Amoah v. Mallah*, 57 A.D.3d 29 (3d Dep't 2008) (whether federal immigration law preempted a decision by the Worker's Comp Board to award benefits to an undocumented alien)

#### *Federal Courts*

*FTC v. Actavis, Inc.*, 570 U.S. \_\_\_, 133 S. Ct. 2223 (2013) (amicus brief for New York and other states) (on the permissibility under antitrust law of "pay-for-delay" agreements, in which drug manufacturers pay manufacturers of generic competitors to stay out of the market)

*Bryant v. N.Y.S. Educ. Dep't*, 692 F.3d 202 (2d Cir. 2012) (a challenge under the Individuals with Disabilities Education Act to prohibition on schools' use of "aversive interventions," i.e., electric skin-shocks); *and brief opposing certiorari; cert. denied*, 133 S. Ct. 2022 (2013)

*Yeldon v. Fisher*, 710 F.3d 452 (2d Cir. 2013) (on whether consent is required to refer a case to a magistrate judge)

*Dandamudi v. Tisch*, 686 F.3d 66 (2d Cir. 2012) (on what level of Equal Protection scrutiny applies to state laws affecting nonimmigrant aliens)

*Reynolds v. Barrett*, 685 F.3d 193 (2d Cir. 2012) (on whether a pattern-or-practice theory of discrimination is available under 42 U.S.C. § 1983)

*Kirk v. N.Y.S. Dep't of Educ.*, 644 F.3d 134 (2d Cir. 2011) (holding that attorney's fees are available under 42 U.S.C. § 1988 where plaintiff obtained a final judgment, even though the case became moot on appeal and the original judgment was vacated)

*Air Transport Association v. Cuomo*, 520 F.3d 218 (2d Cir. 2008) (whether Airline Deregulation Act preempted NYS requirement that planes on the tarmac for more than five hours provide food, air, water, bathrooms)