

**SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FIRST DEPARTMENT**

People v. Pedraza

Pedraza, 2026 NY Slip Op 03368 (Supreme Court of the State of New York Appellate Division First Department
2026) · No. Ind. No. 58/00; Appeal No. 6737; Case No. 2022-03804 · Decided May 28, 2026

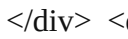
OPINION

People v. Pedraza 2026 NY Slip Op 03368

PER CURIAM.

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People v Pedraza

2026 NY Slip Op 03368

May 28, 2026

Appellate Division, First Department

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The People of the State of New York, Respondent,

v

Eugenia Pedraza, Defendant-Appellant.

Decided and Entered: May 28, 2026

Ind No. 58/00|Appeal No. 6737|Case No. 2022-03804

Before: Gesmer, J.P., Shulman, Rodriguez, O'Neill Levy, JJ.

Jenay Nurse Guilford, Center for Appellate Litigation, New York (Gabriella Raya Agranat-Getz of counsel), for appellant.

Darcel D. Clark, District Attorney, Bronx (Brian Witthuhn of counsel), for respondent.

[*1]

Order, Supreme Court, Bronx County (LlinÉt M. Rosado, J.), entered on or about February 7, 2022, which insofar as appealed from, denied defendant's CPL 440.10 motion to vacate a judgment of conviction rendered June 13, 2002, unanimously affirmed.

The court providently exercised its discretion in denying, without a hearing, defendant's motion to vacate the judgment based on her claim of ineffective assistance of counsel by her trial counsel's failure to negotiate an immigration-favorable plea, as that claim was speculative (*cf* *People v George*, 183 AD3d 436, 437 [1st Dept 2020]). Moreover, the evidence submitted on the motion failed to establish any reasonable probability that the People would have made such an offer (*see* *Lafler v Cooper*, 566 US 156, 163-164 [2012]; *People v Olivero*, 130 AD3d 479, 480 [1st Dept 2015], *lv* denied 26 NY3d 1042 [2015]).

To the extent defendant's claim is based on defense counsel's failure to advise her of the adverse immigration consequences of her plea, the court

correctly concluded that is not a cognizable basis for vacatur or a hearing. For a defendant whose conviction became final before the United States Supreme Court's decision in *Padilla v Kentucky* (559 US 356, 373-374 [2010]), such a defendant "has no basis under either the United States or New York Constitutions for claiming that the alleged lack of immigration advice constituted ineffective assistance of counsel" (*People v Llibre*, 125 AD3d 422, 423 [1st Dept 2013], *lv denied* 26 NY3d 969 [2015]; *see Chaidez v United States*, 568 US 343 [2013] [*Padilla* does not have retroactive application]). Defendant was convicted on June 13, 2002.

THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: May 28, 2026

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PER CURIAM.

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[2015]). To the extent defendant's claim is based on defense counsel's failure to advise her of the adverse immigration consequences of her plea, the court correctly concluded that is not a cognizable basis for vacatur or a hearing. For a defendant whose conviction became final before the United States Supreme Court's decision in *Padilla v Kentucky* (559 US 356, 373-374 [2010]), such a defendant "has no basis under either the United States or New York Constitutions for claiming that the alleged lack of immigration advice constituted ineffective assistance of counsel" (*People v Llibre* , 125 AD3d 422, 423 [1st Dept 2013], lv denied 26 NY3d 969 [2015]; see *Chaidez v United States* , 568 US 343 [2013] [*Padilla* does not have retroactive application]). Defendant was convicted on June 13, 2002. THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: May 28, 2026 Court Decisions All Court Decisions Official Reports Service Bound Volumes Decision Search Resources RSS Feeds Style Manual Citation Tools Opinion Formatting & Privacy Guidelines Opinion Selection Criteria Legal Research Portal Site Index About About the Law Reporting Bureau About our Operations Contact Us Twitter Quick Contact Info 17 Lodge Street Albany, NY 12207 Phone: (518) 453-6900 Links to or from other sites do not signify endorsement or relationship with them.