

**SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department**

Letitia James, Attorney General of the State of New York,) Appellate Division) Docket No. 23-01059)
Intervenor-Appellant,) Supreme Court, Ontario) County – Index No.) 134102-2022
Inv. John Kesel, Ontario County Sheriff’s Department,)) Oral Argument) Not Requested
Petitioner,))
v.))
Jeffrey Holtz,))
Respondent-Respondent,))

**NOTICE OF MOTION OF
BRADY CENTER TO PREVENT GUN VIOLENCE AND
GIFFORDS LAW CENTER TO PREVENT GUN VIOLENCE
FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE***

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PLEASE TAKE NOTICE that, upon the accompanying affirmation of Arthur Luk, Esq. dated July 28, 2023, together with the accompanying Exhibit A, *amici curiae* Brady Center to Prevent Gun Violence and Giffords Law Center to Prevent Gun Violence will move this Court, pursuant to 22 NYCRR § 1250.4(f), at a term of the Appellate Division of the Supreme Court, Fourth Department, at the Courthouse located at 50 East Avenue, Rochester, New York, on Monday, August 14, 2023 at 10 a.m., or as soon thereafter as counsel may be heard, for an order granting leave to file a brief as *amici curiae* in support of intervenor-appellant, the Attorney General of the State of New York.

Undersigned counsel contacted counsel for the Attorney General of the State of New York, which consents to the motion, and the respondent, which has not responded as of the filing of this motion.

Pursuant to CPLR 2214(b), answering affidavits or affirmations, if any, are required to be served upon the undersigned at least two days before the return date of this motion.

Dated: July 28, 2023
New York, NY

Respectfully submitted,

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Petitioner,) AFFIRMATION IN
) SUPPORT OF
v.) MOTION FOR
) LEAVE TO FILE
Jeffrey Holtz,) BRIEF AS <i>AMICUS</i>
) <i>CURIAE</i>
Respondent-Respondent,)
)

Arthur Luk, an attorney admitted to practice in the State of New York, hereby affirms under penalty of perjury:

1. I am a partner at the law firm of Arnold & Porter Kaye Scholer LLP, counsel for the proposed *amici curiae* Brady Center to Prevent Gun Violence (“Brady”) and Giffords Law Center to Prevent Gun Violence (“Giffords Law Center”).

I. Proposed *Amici* are leading gun policy organizations.

2. Brady is the nation’s most longstanding nonpartisan, nonprofit organization dedicated to reducing gun violence through education, research, and legal advocacy. Brady has a substantial interest in ensuring that the Constitution is construed to protect Americans’ fundamental right to live. Brady also has a

substantial interest in protecting the authority of democratically elected officials to address the nation's gun violence epidemic. Brady works across Congress, courts, and communities, uniting gun owners and non-gun-owners alike, to take action to prevent gun violence.

3. Giffords Law Center is a non-profit policy organization serving lawmakers, advocates, legal professionals, gun violence survivors, gun owners, and others who seek to reduce gun violence and improve the safety of their communities. The organization was founded more than a quarter-century ago, and through key partnerships, Giffords Law Center researches, drafts, and defends the laws, policies, and programs proven to effectively reduce gun violence. With its partner organization Giffords, Giffords Law Center also advocates for the interests of gun owners and law enforcement officials who understand that Second Amendment rights have always been consistent with gun safety legislation and community violence prevention strategies.

4. Brady and Giffords Law Center have contributed their technical expertise and informed analysis in numerous cases involving firearm regulations and constitutional principles affecting gun policy. *See, e.g., New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022) (“*Bruen*”); *McDonald v. City of Chicago*, 561 U.S. 742 (2010); *District of Columbia v. Heller*, 554 U.S. 570 (2008); *Libertarian Party v. Cuomo*, 970 F.3d 106 (2d Cir. 2020); *Bauer v. Becerra*, 858

F.3d 1216 (9th Cir. 2017). Several courts have cited research and information from *Amici*'s briefs in Second Amendment rulings. *See, e.g., Ass'n of N.J. Rifle & Pistol Clubs v. Att'y Gen. N.J.*, 910 F.3d 106, 121-22 (3d Cir. 2018); *Stimmel v. Sessions*, 879 F.3d 198, 204, 208, 210 (6th Cir. 2018); *Peruta v. County of San Diego*, 824 F.3d 919, 943 (9th Cir. 2016) (en banc) (Graber, J., concurring); *Nat'l Ass'n for Gun Rights, Inc. v. San Jose*, No. 22-cv-501-BLF, 2022 U.S. Dist. LEXIS 138385, at *26, 30 & nn.4, 5 (N.D. Cal. Aug. 3, 2022); *Hirschfeld v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 417 F. Supp. 3d 747, 754, 759 (W.D. Va. 2019); *Md. Shall Issue v. Hogan*, 353 F. Supp. 3d 400, 403-05 (D. Md. 2018).

II. Proposed *Amici* offer policy and social science expertise relevant to the disposition of the matter before the Court.

5. Proposed *amici*'s brief will assist the Court in deciding this important matter by adding to the parties' briefing on the valuable role Emergency Risk Protection Orders play in preventing gun violence.

6. *Amici curiae* with policy and social science expertise often assist courts through so-called "Brandeis briefs," a "well-known technique for asking the court to take judicial notice of social facts," including empirical evidence. *McCleskey v. Kemp*, 753 F.2d 877, 888 (11th Cir. 1985) (internal quotation marks omitted), *aff'd*, 481 U.S. 279 (1987). *Amici*'s expertise in social science and public health research could be particularly helpful to the Court here by explaining the potential real-world impact of New York's ERPO law. *See Graham v. Florida*, 560 U.S. 48, 68 (2010)

(citing a Brandeis-style *amici* brief that described how “developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds”). *Amici*’s proposed brief presents publicly available research, which the Court may properly consider at this stage of the proceedings. *See Papasan v. Allain*, 478 U.S. 265, 268 n.1 (1986) (at motion to dismiss stage, courts may consider “items in the public record”); *see also Nat’l Rifle Ass’n of Am., Inc. v. Bureau of Alcohol, Tobacco, Firearms, & Explosives*, 700 F.3d 185, 210 (5th Cir. 2012) (considering social science evidence, including publicly available crime statistics, at summary judgment).

7. *Amici*’s participation is desirable because they have substantial expertise with ERPO laws, and the relevant evidence demonstrating the effectiveness of ERPO laws.

8. Proposed *amicus* brief is attached as **Exhibit A**.

9. Pursuant to 22 NYCRR § 1250.4(a)(3), attached as **Exhibit B** is a copy of the docket for the lower court proceeding that reflects the Notice of Appeal, filed on July 21, 2023, is sealed, and attached as **Exhibit C** is a copy of the Decision and Order appealed from.

10. No counsel for a party authored this brief in whole or in part, and no person other than *amici* or their counsel made any monetary contributions intended to fund the preparation or submission of this brief.

11. In the event the Court grants this motion, *amici's* counsel shall promptly provide any additional copies of the brief as directed by the Court.

Wherefore, I respectfully request that the Court enter an order (i) granting *amici* leave to submit the proposed brief as *amici curiae* in support of Intervenor-Appellant; (ii) accepting the brief that has been filed and served along with this motion; and (iii) granting such other and further relief as this Court deems just and proper.

Dated: July 28, 2023
Washington, DC

Respectfully submitted,



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EXHIBIT A

No. 23-01059

Supreme Court of the State of New York
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Supreme Court, Ontario County - Index No. 134102-2022

CORPORATE DISCLOSURE STATEMENTS

Amicus curiae Brady Center to Prevent Gun Violence (“Brady”) is a nonprofit organization. It has no parent corporations. It has no stock, and therefore no publicly held company owns 10% or more of its stock.

Amicus curiae Giffords Law Center to Prevent Gun Violence (“Giffords Law Center”) is a nonprofit organization. It has no parent corporations. It has no stock, and therefore no publicly held company owns 10% or more of its stock.

INTEREST OF THE AMICI

Brady is the nation’s most longstanding nonpartisan, nonprofit organization dedicated to reducing gun violence through education, research and legal advocacy. Brady has a substantial interest in ensuring that the Constitution is construed to protect Americans’ fundamental right to live. Brady also has a substantial interest in protecting the authority of democratically elected officials to address the nation’s gun violence epidemic. Brady works across Congress, courts and communities, uniting gun owners and non-gun-owners alike, to take action to prevent gun violence. Brady has filed amicus briefs in many cases involving the regulation of firearms, including *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111 (2022) and *District of Columbia v. Heller*, 554 U.S. 570 (2008).¹

Giffords Law Center is a non-profit policy organization serving lawmakers, advocates, legal professionals, gun violence survivors, gun owners and others who seek to reduce gun violence and improve the safety of their communities. The organization was founded 30 years ago following a massacre at a San Francisco law firm, and was renamed Giffords Law Center after joining forces with the gun-safety organization led by former Congresswoman Gabrielle Giffords. Today, through key partnerships, Giffords Law Center researches, drafts and defends the laws, policies

¹ No counsel for a party authored this brief in whole or in part, and no person other than *amici* or their counsel made any monetary contributions intended to fund the preparation or submission of this brief.

and programs proven to effectively reduce gun violence. With its partner organization Giffords, Giffords Law Center also advocates for the interests of gun owners and law enforcement officials who understand that Second Amendment rights have always been consistent with gun safety legislation and community violence prevention strategies.

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INTRODUCTION

Gun violence is a growing epidemic that is traumatizing communities in New York and across the country. Tens of thousands of lives are tragically lost each year from the record-high number of gun homicides and suicides, and hundreds of thousands more are physically, mentally and economically devastated from the aftermath of gun violence. In many instances of gun violence, there are advance warning signs of the shooter’s intention to inflict serious bodily harm or death on themselves or others.

States including New York have enacted Extreme Risk Protection Order (“ERPO”) laws to fill a gap in existing gun violence prevention laws and to allow for intervention when advance warning signs exist. Other firearm prohibiting remedies designed to prevent violence, such as domestic violence civil restraining orders and mental health prohibitions, are limited to situations where the requisite relationship (intimate partner or family member) or admission to, and evaluation at, a mental health facility are required in order to prohibit a person who has been dangerous from owning or purchasing firearms. ERPO laws build on these longstanding and legally well-established firearm prohibiting remedies by allowing those most likely to recognize when a person is at significant risk of harming themselves or others—family members, law enforcement, teachers and healthcare professionals—to petition an appropriate court for a civil order that temporarily

prohibits that individual from having firearms and requires any firearms the individual currently owns be stored or sold. ERPO laws minimize the risk of harm, provide a cool-down period and do not require that there be abuse or harassment of a specific, named individual, rather than waiting for additional harm to occur. As a growing body of scientific research demonstrates, ERPO laws reduce gun violence, primarily around preventing suicides, mass shootings and gun violence committed by youths.

I. The Gun Violence Epidemic

Gun violence is an epidemic in this country. In 2021, our nation’s shooting deaths reached the highest number ever recorded—nearly 49,000 Americans died from gun violence, *an average of 134 gun deaths a day or one death every 11 minutes*.² This total included a record-high 20,958 homicides.³ In fact, 81% of all

² Ari Davis, Rose Kim & Cassandra Crifasi, *A Year in Review: 2021 Gun Deaths in the U.S.* Johns Hopkins Center for Gun Violence Solutions, Johns Hopkins Bloomberg School of Public Health (June 2023), at 4, <https://publichealth.jhu.edu/sites/default/files/2023-06/2023-june-cgvs-u-s-gun-violence-in-2021.pdf> (citing Centers for Disease Control’s Underlying Cause of Death database, part of the Wide-ranging Online Data for Epidemiologic Research (WONDER) database (“CDC WONDER database”), <https://wonder.cdc.gov>).

³ *Id.* at 5. The homicide firearm rate is 24.9 times higher in the United States than in other developed countries. Erin Grinshteyn & David Hemenway, *Violent death rates in the US compared to those of the other high-income countries, 2015*, Nursing and Health Professions Faculty Research and Publications (2019), https://repository.usfca.edu/nursing_fac/130/?utm_source=repository.usfca.edu%2F130&utm_medium=PDF&utm_campaign=PDFCoverPages.

homicides were by firearm, the highest proportion in our nation’s history.⁴ Gun suicides also reached a record high—26,328 in total, a 10% increase from 2019.⁵ Like homicides, the majority of suicides were by firearm (55%, more than twice the number of any other method).⁶ Over the last 40 years, over 1.35 million Americans died from gun violence—more than from all of our country’s wars combined.⁷

In New York, the rate of gun deaths increased 12% between 2012 and 2021, driven by a 43% increase in gun homicides.⁸ In an average year, *939 New Yorkers are killed by gun violence*, and another 1,991 are wounded.⁹ In 2021, over 1,000

⁴ Davis, *supra* note 2 at 9. Provisional estimates of gun violence published by the CDC indicate a slight decrease in the overall number of gun homicides in 2022 (20,958 in 2021 vs, 19,592 in 2022). While this small decline indicates progress, the national gun homicide rate still remains above pre-pandemic levels. Jennifer Mascia. *Gun Deaths Dropped Slightly in 2022 – But Were Still High*, The Trace (Jul. 13, 2023), <https://www.thetrace.org/2023/07/gun-deaths-cdc-data-suicide-homicide/> (citing CDC WONDER database, *supra* note 2).

⁵ Davis, *supra* note 2 at 5, 6.

⁶ *Id.* at 10.

⁷ *Id.* at 7.

⁸ *Gun Violence in New York*, Everytown for Gun Safety (updated May 2023), <https://everystat.org/wp-content/uploads/2019/10/Gun-Violence-in-New-York-2.pdf> (citing CDC WONDER database, *supra* note 2).

⁹ *Id.*

New Yorkers died by firearm,¹⁰ including a disproportionate number outside of New York City.¹¹

Many more suffer traumatic and horrific non-fatal injuries from firearms. Between 2016 and 2018, an estimated 228,380 Americans suffered firearm-related injuries.¹² Survivors of gun violence often suffer major long-term physical disabilities, such as brain trauma and paralysis, as well as from chronic mental health conditions, including memory loss and post-traumatic stress disorder.¹³

The trauma inflicted by gun violence reaches far beyond those killed or injured from a bullet. Twenty-one percent of all American adults have been threatened with a gun.¹⁴ Seventeen percent of Americans have witnessed a shooting,

¹⁰ Giovanna Braganza, Alexandra Brandes & Joan Guzik, *The Ripple Effect of Firearms*, United Hospital Fund (Mar. 2023), at 11, https://uhfnyc.org/media/filer_public/e3/67/e3675f6c-2f6a-4530-a1f4-5bc54e90f57e/ripple_effect_of_firearms_chartbook_report.pdf (citing CDC WONDER database, *supra* note 2).

¹¹ *Id.*

¹² Kathryn Schnippel, Sarah Burd-Sharps, Ted Miller, Bruce Lawrence & David Swedler, *Nonfatal Firearm Injuries by Intent in the United States: 2016-2018 Hospital Discharge Records from the Healthcare Cost and Utilization Project*, *West J Emerg Med.* (May 21, 2021), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8203029/>.

¹³ *Fast Facts: Firearm Violence Prevention*, CENTERS FOR DISEASE CONTROL AND PREVENTION (May 4, 2022), <https://www.cdc.gov/violenceprevention/firearms/fastfact.html>.

¹⁴ Shannon Schumacher, Ashley Kirzinger, Marley Presiado, Isabelle Valdes & Mollyann Brodie, *Americans' Experiences With Gun-Related Violence, Injuries,*

and 19% of Americans have a family member who has been killed by a gun.¹⁵ Exposure to gun violence has been linked to illnesses like asthma, hypertension, cancer and stroke; psychiatric illnesses, including depression and post-traumatic stress disorder; and, negative health outcomes relating to social isolation and alcohol and substance use disorders.¹⁶

The impacts of gun violence do not stop there. Annually, our country suffers over \$1.5 billion in lost wages and \$2.2 billion in direct medical costs due to gun deaths and injuries.¹⁷ Combined lifetime medical and work loss costs from gun violence top \$48 billion.¹⁸ A single gun death can cost a community approximately \$3.3 million from closed businesses and lost economic opportunities.¹⁹ In 2020, firearm deaths accounted for over 1.13 million years of potential life lost before the

And Deaths, KFF POLLING (Apr. 11, 2023), <https://www.kff.org/other/poll-finding/americans-experiences-with-gun-related-violence-injuries-and-deaths/>.

¹⁵ *Id.*

¹⁶ *Violence is a Public Health Issue: Public Health Is Essential to Understanding and Treating Violence in the U.S.*, AMERICAN PUBLIC HEALTH ASSOCIATION (Nov. 13, 2018), <https://apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2019/01/28/violence-is-a-public-health-issue>.

¹⁷ Braganza, *supra* note 10 at 16.

¹⁸ Katherine Fowler, Linda Dahlberg, Tadesse Haileyesus & Joseph Annet, *Firearm injuries in the United States*, *Prev Med.* (Oct. 2015), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4700838/>.

¹⁹ Braganza, *supra* note 10 at 16.

age of 65—more than diabetes, stroke and liver disease combined.²⁰ In New York, gun deaths and injuries cost the state over \$11.4 billion each year,²¹ including over \$300 million paid by taxpayers.²²

II. ERPO Laws Are Temporary, Risk-Based Firearm Removal Tools That Reduce Gun Violence

As noted, ERPOs are civil orders issued by a court when individuals show clear signs of threatening to harm themselves or others.²³ Similar to longstanding firearm-prohibiting civil domestic violence orders, ERPOs require these individuals (respondents) to temporarily relinquish any currently owned firearms; additionally, they may not purchase or possess additional firearms while the order is in effect.²⁴ Under New York law, law enforcement, family members, school administrators and mental health professionals may petition the court for ERPOs.²⁵ Non-law enforcement petitioners are included because these are the people most likely to

²⁰ Davis, *supra* note 2 at 12.

²¹ Everytown for Gun Safety, *supra* note 8.

²² *Id.*

²³ *What Are Extreme Risk Laws?* Brady Center to Prevent Gun Violence, <https://www.bradyunited.org/fact-sheets/what-are-extreme-risk-laws>; *A Comprehensive Approach to Preventing Gun Violence*, Brady Center to Prevent Gun Violence, <https://s3.amazonaws.com/brady-static/globals/BradyPolicyApproach.pdf>.

²⁴ *Id.*

²⁵ *Extreme Risk Protection Laws: New York*, John Hopkins Bloomberg School of Public Health (Dec. 12, 2022), <https://americanhealth.jhu.edu/erpo-state/new-york>.

notice when individuals present a significant risk of violence, are likely to have relevant information or evidence relevant to those risks and are most likely to be invested in proactively intervening to prevent harm.²⁶

Only a court may issue an ERPO.²⁷ Procedures, including due process provisions requiring notice and the opportunity to be heard, are based on longstanding and legally recognized domestic violence civil court procedures and similarly provide for a very short-term “temporary order,” with the potential for a new order after a hearing that also provides a temporary but longer term prohibition (referred to as the “final order”).²⁸ If the court grants the initial “temporary order,” law enforcement will present it to the respondent and remove any guns the respondent may have.²⁹ The respondent receives notice of the hearing, has the opportunity to be heard by the court within days and can hire counsel. At the hearing, both sides may present evidence in support of their case and in support of, or

²⁶ Assembly Speaker Carl E. Heastie, *Assembly Passes Package of Legislation to Strengthen State’s Gun Laws and Protect New York Communities*, NEW YORK ASSEMBLY NEWS RELEASE (Jun. 2, 2022), <https://nyassembly.gov/Press/?sec=story&story=102242>.

²⁷ *Applying for an Extreme Risk Protection Order (ERPO)*, New York State Unified Court System, <https://www.nycourts.gov/CourtHelp/Safety/ERPOapplying.shtml>.

²⁸ Brady Center to Prevent Gun Violence, *supra* note 23.

²⁹ *Basic Steps in an Extreme Risk Protection Order Case (ERPO)*, New York State Unified Court System, <https://www.nycourts.gov/CourtHelp/Safety/ERPObasics.shtml>.

opposition to, the issuance of the final order.³⁰ The presiding judge will then either terminate the temporary ERPO or issue a final order (up to one year in New York).³¹ Once the order is terminated or expired, the respondent can request the return of their guns and ammunition.³² Because ERPOs are civil orders, the respondent will not have a criminal record resulting from the issuance of the ERPO (unless the ERPO is violated) but instead will be listed as a prohibited person when federal firearm licensees run background checks to prevent future firearm and ammunition purchases while the ERPO is in effect.³³

The impetus for ERPO laws stemmed from states recognizing that senseless tragedies could be avoided if there were remedies available to temporarily diffuse clear, imminent and predictable crises before they turned deadly.³⁴ In March 1998, a Connecticut Lottery employee gunned down four of his bosses before turning his

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ Johns Hopkins Center for Gun Violence Prevention and Policy, *Extreme Risk Protection Orders*, JOHNS HOPKINS BLOOMBERG SCHOOL OF PUBLIC HEALTH, <https://www.jhsph.edu/research/centers-and-institutes/johns-hopkins-center-for-gun-violence-prevention-and-policy/research/extreme-risk-protection-orders>.

³⁴ Lori Mack. *Connecticut Remembers Lottery Shooting That Prompted First-Of-Its-Kind Gun Legislation*, CONNECTICUT PUBLIC RADIO (Mar. 6, 2018), <https://www.ctpublic.org/politics/2018-03-06/connecticut-remembers-lottery-shooting-that-prompted-first-of-its-kind-gun-legislation>.

gun on himself and dying by suicide.³⁵ What caught Connecticut lawmakers' attention was that the shooter "displayed clear signs of troubling behavior well in advance of the shooting."³⁶ As described by Mike Lawlor, who at the time had been Connecticut's chairman of the state legislature's Judiciary Committee:

"He had been on a leave of absence and during that leave of absence, among other things, he moved in with his parents, he attempted suicide, the police responded, in the course of all of this it was clear that he had a bunch of firearms and was acquiring more," Lawlor said. "And when all was said and done, law enforcement said, 'Well, he hasn't actually broken any law so we can't actually do anything.'"³⁷

As a result, the following year Connecticut passed a risk warrant law (similar to an ERPO law) that empowered law enforcement to remove firearms, and prohibit future acquisition of firearms, from individuals posing a significant risk of injury to themselves or others.³⁸

In 2014, California passed an ERPO law after a mass shooting in the college town of Isla Vista killed six students (three by gunfire) and the shooter.³⁹ Fourteen

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*; see also, *Extreme Risk Protection Orders in Connecticut*, GIFFORDS LAW CENTER TO PREVENT GUN VIOLENCE (Jan. 5, 2023), <https://giffords.org/lawcenter/state-laws/extreme-risk-protection-orders-in-connecticut/>.

³⁹ Bloomberg American Health Initiative. *Extreme Risk Protection Orders: California*, Johns Hopkins Bloomberg School of Public Health (Dec. 12, 2022), <https://americanhealth.jhu.edu/erpo-state/california>; Santa Barbara County Sheriff's

others were injured, including seven by gunshot wounds.⁴⁰ The shooter’s mother had informed law enforcement prior to the shooting that her son was acting dangerously. She asked them to intervene, but they told her their hands were tied; her son was an adult and had not committed any crime.⁴¹

New York’s legislature expressed the same concerns raised by Connecticut and California in enacting this state’s ERPO law in 2019:

Justification: Family and household members are often the first to know when someone is experiencing a crisis or exhibiting dangerous behavior. They may even report their fears to law enforcement, but in New York, as in many other states, law enforcement officers may not have the authority to intervene based on the evidence they are provided, sometimes resulting in preventable tragedies, including interpersonal gun violence or suicide involving a gun.⁴²

Office. *Isla Vista Mass Murder, May 23, 2014, Investigative Summary*, (Feb. 18, 2015), at Introduction, <https://web.archive.org/web/20150220034256/http://www.sbsheriff.us/documents/islavistainvestigativesummary.pdf>.

⁴⁰ Santa Barbara County Sheriff’s Office, *supra* note 39 at Introduction.

⁴¹ Bloomberg American Health Initiative, *supra* note 39.

⁴² New York State Senate Bill S2451 (2019-2020 Legislative Session), <https://www.nysenate.gov/legislation/bills/2019/S2451>.

Twenty-one states and the District of Columbia now have ERPO laws.⁴³ Sixteen of the 21 states that have enacted ERPO laws have done so since 2018.⁴⁴

States with stronger gun laws, including ERPO laws, have lower rates of gun violence.⁴⁵ Conversely, states with the weakest gun laws, including no ERPO laws, have the highest gun death rates in the nation.⁴⁶ Out of the thirteen states with the highest gun fatality rates, only one has an ERPO law (New Mexico).⁴⁷ Significantly, the association between stronger firearm laws and lower rates of firearm fatalities remains even after controlling for a wide-range of variables, including state-specific and socio-economic factors.⁴⁸

⁴³ California, Colorado, Connecticut, Delaware, Florida, Hawaii, Illinois, Indiana, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, Virginia, and Washington. *See Promising Approaches for Implementing Extreme Risk Laws: A Guide for Practitioners and Policymakers*, Everytown for Gun Safety and Johns Hopkins Center for Gun Violence Solutions (May 2023), Appendix A, <https://publichealth.jhu.edu/sites/default/files/2023-05/2023-may-cgvs-promising-approaches-for-implementing-extreme-risk-laws.pdf>.

⁴⁴ *Id.* at 9.

⁴⁵ Davis, *supra* note 2 at 6, 20-23; *Annual Gun Law Scorecard*, Giffords Law Center to Prevent Gun Violence (2022), <https://giffords.org/lawcenter/resources/scorecard/>.

⁴⁶ Davis, *supra* note 2 at 20; *Gun Safety Policies Save Lives*, Everytown Research & Policy (2023), <https://everytownresearch.org/rankings>; Giffords Law Center, *supra* note 45.

⁴⁷ Davis, *supra* note 2 at 21, Figure 12 (age-adjusted).

⁴⁸ Lois Lee, Eric Fleegler, Caitlin Farrell, et al., *Firearm Laws and Firearm Homicides: A Systematic Review*, JAMA INTERN MED. (Jan. 2017), https://www.researchgate.net/profile/Lois-Lee-2/publication/310317015_Firearm_Laws_and_Firearm_Homicides_A_Systematic

III. ERPO Laws Curb Gun Violence

ERPO laws are effective at curbing gun violence because, by making it more difficult for an individual in crisis to access firearms, they help prevent three rising causes of gun deaths: suicide, mass shootings and gun violence committed by youth. These types of gun violence often present clear advance warning signs. These warning signs enable law enforcement, family members, teachers and healthcare professionals to present evidence in support of courts issuing ERPOs, which temporarily remove firearms from those who may be temporarily a danger to themselves and others and can prevent future harm.

A. ERPO Laws Are An Effective Response to Gun Suicides

1. *Suicide by firearm is a deadly crisis*

Suicides account for more than 60% of gun fatalities.⁴⁹ While the rates of suicide by other means have been dropping, the rate of suicide by firearm has increased significantly over the past three decades.⁵⁰ The gun suicide rate in the

[_Review/links/5a4b9133aca2729b7c88099e/Firearm-Laws-and-Firearm-Homicides-A-Systematic-Review.pdf](#).

⁴⁹ Ed Fund, *Gun Violence in the United States* (2021), <https://efsgv.org/learn/type-of-gun-violence/gun-violence-in-the-united-states/>.

⁵⁰ Roni Caryn Rabin, *Gun-Related Suicides and Killings Continued to Rise in 2021*, N.Y. TIMES (Oct. 6, 2022), <https://www.nytimes.com/2022/10/06/health/guns-homicides-suicides-cdc.html>.

United States is now nearly twelve times the rate of other high-income countries.⁵¹ Between 2009-2019, nearly 220,000 Americans died by firearm suicide, almost twice the number killed in the First World War.⁵² In 2021 alone, 26,320 Americans died by firearm suicide, the most ever recorded in a single year, and an increase of over 8% from just the year prior.⁵³ In New York, 53% of gun deaths in New York are suicides.⁵⁴ On average, 457 New Yorkers die by gun suicide each year, equating to *one every 19 hours*.⁵⁵

2. *ERPO laws directly target the risk factors for gun suicide*

ERPO laws are particularly suited to addressing suicide risks. For example, most individuals with suicidal ideation can pass background checks to obtain a gun.⁵⁶ Only a small proportion have a record of involuntary civil commitment or other mental health or criminal adjudication that would disqualify them from gun ownership.⁵⁷ ERPO laws fill this gap by allowing law enforcement and family

⁵¹ *Gun Violence in America*, EVERYTOWN RESEARCH & POLICY (2023), <https://everytownresearch.org/report/gun-violence-in-america/>.

⁵² Ed Fund, *Firearm Suicide*, EFSGV (2021), <https://efsgv.org/firearm-suicide/>.

⁵³ *Gun-Related Suicides and Killings Continued to Rise in 2021*, *supra*.

⁵⁴ *Gun Violence in New York*, Everytown for Gun Safety (Jan. 2022), <https://everystat.org/wp-content/uploads/2019/10/Gun-Violence-in-New-York.pdf>.

⁵⁵ *Id.*

⁵⁶ *Extreme Risk Protection Orders: An Evidence-based Approach to Preventing Suicide*, *supra*.

⁵⁷ Jeffrey W. Swanson et al., *Implementation And Effectiveness of Connecticut's Risk-Based Gun Removal Law: Does it Prevent Suicides?*, 80 LAW AND

members to obtain a court order, based on evidence and fair procedures, temporarily preventing the restrained person from having firearms during a critical period.

Being able to obtain a court order that temporarily removes guns from persons actively contemplating and exploring suicide saves lives. Access to guns is a strong, independent risk factor for dying by suicide.⁵⁸ Suicide attempts by firearm are overwhelmingly fatal—killing the individual in 85%-90% of cases.⁵⁹ (Suicide attempts by drug overdose—the most common suicide method—result in death only 3%-5% of the time.⁶⁰) Evidence proves that temporarily putting time and space between a suicidal person and access to a firearm during the peak of their mental health crisis—the effect of an ERPO—improves the likelihood that they will survive that crisis.⁶¹ Consistent with this finding, approximately 90% of individuals

CONTEMPORARY PROBLEMS 179-208 (2017),
<https://scholarship.law.duke.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=4830&context=lcp>.

⁵⁸ Amy Barnhorst, *Suicide prevention efforts in the United States and their effectiveness*, CURR. OPIN. PSYCHIATRY (May 2021), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8048720/>.

⁵⁹ Conner A, Azrael D, Miller M, *Suicide case-fatality rates in the United States, 2007 to 2014: a nationwide population-based study*, ANN INTERN MED (Dec. 17, 2019), <https://pubmed.ncbi.nlm.nih.gov/31791066/>; Drexler, Madeline, *The Hidden Toll*, HARVARD PUBLIC HEALTH MAGAZINE (Aug. 16, 2016), https://www.hsph.harvard.edu/magazine/magazine_article/guns-suicide.

⁶⁰ *Id.*

⁶¹ *Firearm Suicide, supra* (citing Johnson RM & Coyne-Beasley T., *Lethal means reduction: What have we learned?* Current Opinion in Pediatrics (2009), <https://pubmed.ncbi.nlm.nih.gov/19623078/>).

considering gun suicide will not choose an alternative means if they cannot access a firearm.⁶²

3. *Firearm legislation, including ERPO laws, reduces gun suicide rates*

After controlling for other factors associated with suicide, such as mental illness and drug and alcohol abuse, states with higher firearm ownership are shown to have higher suicide rates.⁶³ Indeed, gun suicides are almost twice as prevalent in high gun ownership states as in low gun ownership states of approximately equal populations, while non-firearm suicides are about equal.⁶⁴ Empirical studies establish that stronger firearm legislation is associated with lower rates of suicide, and vice-versa.⁶⁵

There are numerous real world examples of suicidal individuals who presented clear and significant dangers to themselves until a judge issued an ERPO

⁶² *Extreme Risk Protection Orders: An Evidence-based Approach to Preventing Suicide*, AMERICAN PSYCHOLOGICAL ASSOCIATION (2021), www.apa.org/advocacy/extreme-risk-protection-orders-suicide.pdf.

⁶³ *Suicide prevention efforts in the United States and their effectiveness*, *supra*.

⁶⁴ *Firearm Access is a Risk Factor for Suicide*, HARVARD SCHOOL OF PUBLIC HEALTH, <https://www.hsph.harvard.edu/means-matter/means-matter/risk>.

⁶⁵ Michael D. Anestis, *Firearm legislation and statewide suicide rates: The moderating role of household firearm ownership levels*, BEHAVIORAL SCIENCES & THE LAW (May/June 2019), https://heinonline.org/HOL/Page?handle=hein.journals/bsclw37&div=28&g_sent=1&casa_token=&collection=journals.

removing their firearms and provided them the time and space they needed to survive their mental health crises. For example:

- A court in New York granted an ERPO petition sought by law enforcement against a 51-year-old business owner and volunteer firefighter who made comments about hurting himself at his arraignment for having shot at a parked car. The ERPO allowed police to take a pistol and 7 long guns from his residence. The man ultimately agreed with the court's decision to take his guns away for a year.⁶⁶ New York's ERPO law had only been in effect for a month, and its use here was credited as evidence that it was already working to prevent future gun violence.
- A court in Virginia granted an ERPO petition allowing police to remove six rifles and six handguns from a 41-year-old military veteran who suffered from post-traumatic stress disorder and had become suicidal. The man had told friends throughout the day that he was planning to kill himself either by his own hand or from "suicide by cop." His 23-year-old son was in the home with him.⁶⁷ The man's mental health crisis had put himself, the police and his son in mortal peril, and the court granted the ERPO petition.
- A court in Washington granted an ERPO petition after a woman petitioned the court for an ERPO against her boyfriend, who had made a recent suicide attempt and was now expressing an interest in purchasing a firearm. The couple went to the hearing together, and the man did not object to the ERPO. In fact, he told the court he was grateful that someone cared enough to make sure he did not have access to a gun.⁶⁸ This loved one knew the man's interest

⁶⁶ Bob Fredericks, *Man becomes first to lose guns under New York's 'red flag' law*, THE NEW YORK POST (Sept. 13, 2019), <https://nypost.com/2019/09/13/man-becomes-first-to-lose-guns-under-new-yorks-red-flag-law>.

⁶⁷ Daniel Berti, *More than 20 guns removed from Prince William, Manassas residents so far via 'red flag' law*, STATEN ISLAND ADVANCE (Feb. 25, 2021), https://www.princewilliamtimes.com/news/more-than-20-guns-removed-from-prince-william-manassas-residents-so-far-via-red-flag/article_bb995dea-7785-11eb-b148-7f2fe4c3800a.html.

⁶⁸ Hearing Before the United States Senate Committee on the Judiciary, Written Testimony of Kimberly Wyatt, Senior Deputy Prosecuting Attorney, King County Prosecuting Attorney's Office (Mar. 26, 2019), <https://www.judiciary.senate.gov/imo/media/doc/Wyatt%20Testimony.pdf>.

in purchasing a firearm was a cry for help – help that the granted ERPO could provide by prohibiting him for a limited period of time from being able to own, purchase, or possess firearms.

When Connecticut enacted its risk warrant law in 1999 (similar to ERPO laws, see *supra*), the state saw an immediate 1.6% reduction in gun suicides.⁶⁹ Between 2007 and 2015, the law became associated with a 13.7% reduction in the state’s gun suicide rate.⁷⁰ Another study examined over 700 gun removals under Connecticut’s law from its enactment through 2013, and determined that one suicide-related death was averted approximately every 10 to 20 guns seized under the law.⁷¹ A study of Indiana’s risk warrant law similarly found that in the first decade of its existence (2005-2015), the state’s gun suicide rate dropped by 7.5%.⁷² Another study found that Indiana’s law has saved one life from suicide for approximately every 10 guns removed under it.⁷³

The positive effects of these laws are long lasting. A study pulled mortality data in 2020 for 379 Californians who had been subjected to ERPOs between 2016

⁶⁹ Aaron J. Kivisto and Peter Lee Phalen, *Effects of Risk-Based Firearm Seizure Laws in Connecticut and Indiana on Suicide Rates, 1981–2015*, *Psychiatric Services* 69, no. 8 (August 2018), <https://pubmed.ncbi.nlm.nih.gov/29852823/>.

⁷⁰ *Id.*

⁷¹ *Supra* note 57.

⁷² *Supra* note 69.

⁷³ *Supra* note 57.

and 2018—40.6% of which were from threats of self-harm.⁷⁴ None died from a suicide attempt made after entry of the ERPO.⁷⁵

B. ERPO Laws Play An Important Role in Preventing Mass Shootings

1. Mass public shootings are increasing

Mass public shootings are deadlier and more frequent than ever.⁷⁶ Between 1966 (the earliest data available) and February 2020, there were 168 mass shootings in the United States.⁷⁷ While this is a time span of over 50 years, 20% of those mass shootings occurred in the last five years, and 33% in the last ten years.⁷⁸ Sixteen of the 20 deadliest mass shootings occurred in the last 20 years, and 8 of them in the

⁷⁴ Pear VA, Pallin R, Schleimer JP, Tomsich E, Kravitz-Wirtz N, Shev AB, Knoepke CE, Wintemute GJ, *Gun violence restraining orders in California, 2016-2018: case details and respondent mortality*, *Inj Prev.* (Oct. 2022), <https://pubmed.ncbi.nlm.nih.gov/35654574/>.

⁷⁵ *Id.*

⁷⁶ Mass public shootings are, as defined by the Congressional Research Service, incidents occurring in public places, such as schools, workplaces, and places of worship, involving four or more deaths, not including the shooter. This definition does not include domestic settings where shooters target specific family members or friends; it also does not include gang, drug, or organized crime shootings, which similarly involve specifically chosen victims. *See* Sharon Shahid and Megan Duzor, *Voice of America Special Report: History of Mass Shooters* (2021), <https://projects.voanews.com/mass-shootings>.

⁷⁷ *History of Mass Shooters, supra.*

⁷⁸ Jillian Peterson, *A multi-level, multi-method investigation of the psycho-social life histories of mass shooters* (September 2021), <https://www.ojp.gov/pdffiles1/nij/grants/302101.pdf>.

last 5 years.⁷⁹ Since these data were released in 2020, there have been 22 additional mass public shootings, covering a span of only three years and raising the total to 190.⁸⁰ Further, the death toll from mass shootings has risen precipitously in the past decade. In the 1970s, mass shootings claimed an average of 8 lives per year. From 2010 to 2019, however, the average was up to 51 deaths per year.⁸¹ New York has suffered 10 mass public shootings in the past 57 years, but two occurred just in the past year, within one month of each other, in different corners of the state.⁸² To date, 1,364 Americans have died from mass public shootings.⁸³ Seventy-nine percent of adults in the United States report experiencing stress as a result of the possibility of a mass shooting.⁸⁴ One-third of Americans have reported that this stress prevents

⁷⁹ *Id.*

⁸⁰ The Violence Project, *Mass Public Shooting Database* (2023), <https://www.theviolenceproject.org/mass-shooter-database>.

⁸¹ *A multi-level, multi-method investigation of the psycho-social life histories of mass shooters, supra.*

⁸² *See Brooklyn Subway Shooting: Police Search for Gunman in Attack on Brooklyn Subway*, THE N.Y. TIMES (Apr. 12, 2022), <https://www.nytimes.com/live/2022/04/12/nyregion/brooklyn-subway-shooting>; *see also* Carlyon Thompson, et al., *10 dead in Buffalo supermarket attack police call hate crime*, AP NEWS (May 15, 2022), <https://apnews.com/article/buffalo-supermarket-shooting-442c6d97a073f39f99d006dbba40f64b>.

⁸³ *Mass Public Shooting Database, supra* note 80.

⁸⁴ *One-Third of US Adults Say Fear of Mass Shootings Prevents Them from Going to Certain Places or Events*, AMERICAN PSYCHOLOGICAL ASSOCIATION (2019), <https://www.apa.org/news/press/releases/2019/08/fear-mass-shooting>.

them from attending certain public places or events, such as malls, schools or movie theaters.⁸⁵

2. *ERPO laws can disarm mass public shooters*

ERPO laws can help to prevent mass public shootings because assailants frequently present warning signs ahead of committing gun violence. In June 2018, the Federal Bureau of Investigation issued a report of its findings from a study of the pre-attack behaviors of 63 active shooters in the United States from 2000 and 2013.⁸⁶ The FBI found that 77% of these active shooters spent a week or more planning their attack.⁸⁷ This long lead-up time presents potential opportunities to discover the shooter’s plan in time to engage in preventive measures—including petitioning for an ERPO.

⁸⁵ *Id.*

⁸⁶ *A Study of the Pre-Attack Behaviors of Active Shooters in the United States Between 2000 and 2013*, U.S DEPARTMENT OF JUSTICE, FEDERAL BUREAU OF INVESTIGATION (2018), <https://www.fbi.gov/file-repository/pre-attack-behaviors-of-active-shooters-in-us-2000-2013.pdf/view>. The FBI defines “active shooter” more broadly than the Congressional Research Service, *supra*. An “active shooter” is defined as “one or more individuals actively engaged in killing or attempting to kill people in a populated area.” *See Active Shooter Incidents in the United States in 2016 and 2017*, U.S DEPARTMENT OF JUSTICE, FEDERAL BUREAU OF INVESTIGATION, <https://www.fbi.gov/file-repository/active-shooter-incidents-us-2016-2017.pdf/view>.

⁸⁷ *A Study of the Pre-Attack Behaviors of Active Shooters in the United States Between 2000 and 2013*, *supra* note 86.

This opportunity is very real; the FBI report dispels the myth that active shooters are always “loners” with unknowable designs of violence. To the contrary, *all* of the active shooters from the study either lived with someone or had significant in-person or online social interactions within the year preceding the attack.⁸⁸ Further, the FBI found that, on average, an active shooter will display 4-5 concerning behaviors observable to those around that shooter, and 60 of the 63 individuals studied displayed at least two.⁸⁹ These concerning behaviors relate to the shooter’s mental health, problematic interpersonal interactions and evidence of the shooter’s violent intentions.⁹⁰

Individuals considering mass shootings frequently do not keep their plans to themselves, resulting in what scientific literature on this topic refers to as “leakage” of their intentions to others—often sharing their intentions in person, through social media or in written manifestos.⁹¹ Leakage occurs in approximately half of mass shootings, and is typically directed towards family members, friends and colleagues; however, shooters will even leak their plans to strangers and law enforcement

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Mass Shootings: The Motives Vary, but the Path to Violence is Largely the Same*, ROCKEFELLER INSTITUTE OF GOVERNMENT (Jun. 3, 2022), <https://rockinst.org/blog/mass-shootings-the-motives-vary-but-the-path-to-violence-is-largely-the-same/>.

officers.⁹² Further, almost all school mass shooters—93%—leak their plans, mostly to peers, girlfriends or other acquaintances.⁹³ The prevalence of leakage, and the fact that it is usually directed towards people of significance in the shooter’s life, provides a significant opportunity for those on the receiving end to intervene.⁹⁴

3. *ERPOs can disarm heavily armed individuals threatening to commit mass shootings*

ERPOs have been an essential tool to prevent mass shootings, as recently evidenced here in New York when the Tops Friendly Markets grocery store chain narrowly averted its second mass shooting in a year. Law enforcement in the upstate village of Manlius successfully petitioned for an ERPO against a 20-year-old man who threatened to shoot up his local Tops store.⁹⁵ Two teens were in a Discord chat room with the man when he made his threats, which included listing potential dates for a “mass murder,” calculating his “expected kills” and considering “becoming a

⁹² *Id.*; see also *Public Mass Shootings: Database Amasses Details of a Half Century of U.S. Mass Shootings with Firearms, Generating Psychosocial Histories*, NATIONAL INSTITUTE OF JUSTICE (2022), <https://nij.ojp.gov/topics/articles/public-mass-shootings-database-amasses-details-half-century-us-mass-shootings>.

⁹³ Peterson J, Erickson G, Knapp K, Densley J., *Communication of Intent to Do Harm Preceding Mass Public Shootings in the United States, 1966 to 2019*. JAMA Network Open. (Nov. 2021), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8569489/>.

⁹⁴ NIJ 2022, *supra* note 92.

⁹⁵ *Jamesville man charged with threat of mass shooting at Manlius Tops; guns confiscated*. (Mar. 14, 2023), <https://www.syracuse.com/crime/2023/03/jamesville-man-charged-with-threat-of-mass-shooting-at-manlius-tops-guns-confiscated.html>.

legitimate racist and buying a KKK outfit.”⁹⁶ The teens also learned on Discord that the young man was grieving the very recent death of his father, who had been an avid hunter, and therefore that guns were readily available for the man to carry out his threat. They alerted police immediately. Although the man was arrested and the police removed firearms from the home where he lived, the judge determined that he could not legally keep the man in custody.⁹⁷ After interviewing him, however, “police believed [the man] would follow through with his threat if given the chance.” As a result, they successfully petitioned the court for an ERPO. The court order therefore prohibited the man from purchasing or possessing additional guns, stopping him from “getting that chance.”⁹⁸

This case illustrates the warning signs often present in mass shooting threats and the importance of ERPO laws in thwarting those threats. The young man was not completely isolated. He engaged in online social interactions via Discord and he exhibited concerning behaviors related to his mental health, notably grieving the

⁹⁶ Megan Hatch, Iris St. Meran, Callihan Marshall & Madison Moore. *Manlius Police arrest 20-year-old who allegedly made mass shooting threat at Tops*, WSYR-TV. (Mar. 14, 2023), <https://www.localsyr.com/news/local-news/manlius-police-arrest-20-year-old-who-allegedly-made-mass-shooting-threat-at-tops>.

⁹⁷ Emma Misiaszek, *Man who threatened Manlius Tops skips court Friday, officer reveals suspect’s mindset*, WSTM/WTVH (Mar. 17, 2023), <https://www.msn.com/en-us/news/crime/man-who-threatened-manlius-tops-skips-court-friday-officer-reveals-suspects-mindset/ar-AA18LpdT>.

⁹⁸ *Id.*

recent death of his father. He exhibited leakage in disclosing his grief and terroristic intentions on social media, alerting others to a significant, looming danger. And other laws were insufficient to address the threat adequately. The police could not legally keep the man in custody, but they were able to obtain an ERPO to ensure that he could not obtain additional firearms to carry out his mass shooting threat—a threat that police believed he would indeed carry out if given the chance.

There are many more examples throughout the country where ERPO laws have removed firearms from would-be mass shooters who exhibited concerning warning signs about their deadly intentions, potentially saving many lives.⁹⁹ A few of those examples include:

- Colorado: A 61-year-old man who claimed to be formerly with military special forces bragged about shooting individuals and threatened others. Police were granted an ERPO by the court, allowing them to remove at least 59 guns and more than 50,000 rounds of ammunition. The sheriff reported he had “no doubt in [his] mind” that the individual was in “incredible distress” and that without the ERPO “tragedy could have occurred.”¹⁰⁰

⁹⁹ See, generally, *Appendix A: Examples of How Extreme Risk Laws Save Lives*, EVERYTOWN FOR GUN SAFETY RESEARCH & POLICY (2023), <https://everytownresearch.org/report/appendix-a-extreme-risk-laws-save-lives-stories/>; Wintemute, G.J., Pear, V.A., Schleimer, J.P., Pallin, R., Sohl, S., Kravitz-Wirtz, M., & Tomsich, E. (2019), *Extreme Risk Protection Orders Intended to Prevent Mass Shootings*, *Annals of Internal Medicine* (Nov. 2019), <https://pubmed.ncbi.nlm.nih.gov/31426088/>.

¹⁰⁰ Elise Schmelzer & Shelly Bradbury. *Colorado’s red flag law is one year old. Here’s who’s using the law to confiscate guns — and why.*, DENVER POST, (Jan. 10, 2021), <https://www.denverpost.com/2021/01/10/red-flag-law-colorado-first-year-2020-stats/>.

- California: A 37-year-old man went target shooting with friends and co-workers, where they used alcohol, marijuana, and cocaine. The man told the group about his plan to bring firearms to the gas station where he worked and kill “infidels and nonbelievers.” One of the co-workers contacted law enforcement, who petitioned the court for an emergency ERPO. The court granted the order, pursuant to which law enforcement was able to remove three firearms from the man (a pistol, an AR-type rifle, and a shotgun).¹⁰¹
- Washington: A court granted law enforcement an ERPO against a man who claimed to be a member of the Ku Klux Klan and posted on social media about killing “30 Jews” in a synagogue and school. He posted that he hoped to replicate the killing spree of a white supremacist who murdered nine people at a Black church in Charleston, South Carolina. He told police his thoughts of committing mass shootings came “in the heat of the moment,” when anger was “cluttering his brain” like “a chemical reaction.” He then gestured with his hands, “like an explosion.” The ERPO allowed police to remove 12 guns from his home.¹⁰²

Research strongly suggests that ERPO laws play a key role in thwarting mass shootings. For example, researchers at the University of California, Davis Violence Prevention Research Program performed an in-depth analysis of 21 cases in California involving threats of mass shootings where law enforcement sought and obtained ERPOs.¹⁰³ They found that California’s ERPO law helped remove

¹⁰¹ *Extreme Risk Protection Orders Intended to Prevent Mass Shootings*, *supra* note 99.

¹⁰² See Caleb Hutton, *Monroe Man Gets 1 Year in Jail for Threats to Massacre Jews*, HERALDNET (June 5, 2019), <https://bit.ly/2ZsXz0z>; see also Caleb Hutton, *Monroe Man Charged in Killing Plot: ‘I’m Shooting for 30 Jews’*, HERALDNET (Apr. 8, 2019), <http://bit.ly/2lBYXus>.

¹⁰³ *Id.*

52 firearms associated with these 21 cases, and potentially prevented mass shootings in all of them: none of the threatened shootings occurred.¹⁰⁴

C. ERPO Laws Address Minors' Access To Guns

Invoking ERPO laws can also prevent harm to minors, who research shows exhibit emotionality, risk-taking and impulsivity, and have a tendency to act in the spur of the moment, making rash choices regardless of the consequences.¹⁰⁵

1. *ERPO laws' effectiveness at preventing gun suicides applies to youth*

Suicide, for example, is a notoriously impulsive act, and especially so for teens.¹⁰⁶ Youth suicide rates are at a 20-year high.¹⁰⁷ The suicide rate for Americans aged between 10 and 24 increased 57.4% between 2007 and 2018.¹⁰⁸ Almost 7,000

¹⁰⁴ *Id.*

¹⁰⁵ Scott, E. S., & Steinberg, L., *Adolescent development and the regulation of youth crime, THE FUTURE OF CHILDREN* (2008), <https://pubmed.ncbi.nlm.nih.gov/21337996/>.

¹⁰⁶ *Preventing Teen Suicide Through Extreme Risk Prevention Orders*, JOHNS HOPKINS SCHOOL OF PUBLIC HEALTH (2020), <https://americanhealth.jhu.edu/news/preventing-teen-suicide-through-extreme-risk-protection-orders>.

¹⁰⁷ Lisa Wong, *Youth suicide rates at 20-year high, New York governor's mental health report reveals*, STATEN ISLAND ADVANCE (Jun. 16, 2023) <https://www.msn.com/en-us/health/other/youth-suicide-rates-at-20-year-high-new-york-governor-s-mental-health-report-reveals/ar-AA1cGgiU>.

¹⁰⁸ *Preventing Teen Suicide Through Extreme Risk Prevention Orders*, *supra* note 106.

youths in that age range died by suicide in 2018—almost half by gun suicide.¹⁰⁹ ERPO laws like New York’s provide a tool for family members, school administrators and clinicians in healthcare settings—those with youths in their care who are most likely to recognize their suicidal ideation—to intervene when minors are at risk of gun suicide.

2. *ERPOs can help stem the rising tide of teenage mass shooters*

The poor impulse control of young people means they also disproportionately commit mass shootings compared with other age groups.¹¹⁰ Six of the nine deadliest mass shootings in the United States since 2018 were perpetrated by individuals aged 21 or younger.¹¹¹ Experts explain that developmental changes and societal pressures of teenage years can turn young men to violence and, in extreme cases, mass shootings.¹¹²

Credible threats of mass violence can come even from children still in middle school. In 2021, a 14-year-old boy from Polk County, Florida expressed admiration

¹⁰⁹ *Id.*

¹¹⁰ Glenn Thrush & Matt Richtel, *A Disturbing New Pattern in Mass Shootings: Young Assailants*, THE N.Y. TIMES (Jun. 2, 2022), <https://www.nytimes.com/2022/06/02/us/politics/mass-shootings-young-men-guns.html>; Ariana Eunjung Cha, Meghan Hoyer and Tim Meko, *Young men, guns and the prefrontal cortex*, THE WASHINGTON POST (Jun. 3, 2023), <https://www.washingtonpost.com/health/2022/06/03/why-so-many-mass-shooters-young-angry-men/>.

¹¹¹ *A Disturbing New Pattern in Mass Shootings*, *supra* note 110.

¹¹² *Id.*

for the teenage Columbine mass shooters.¹¹³ County Sheriff Grady Judd stated, “Our investigation revealed that the student had thoughts of committing mass school shootings and that he had access to firearms and ammunition.”¹¹⁴ Sheriff Judd credited the successful enforcement of an ERPO as likely preventing the mass shooting.¹¹⁵

3. *ERPOs are necessary to help prevent minors from committing gun violence despite other laws prohibiting them from gun ownership and possession*

Under New York law, ERPOs may be issued when probable cause exists that an individual is likely to engage in conduct that would result in serious harm, regardless of the individual’s age.¹¹⁶ ERPOs work to supplement other state laws that already limit minors from purchasing or possessing guns.¹¹⁷ First, there are exceptions under New York law that permit minors to legally possess firearms; for example, minors between 12 and 15 years of age are permitted to possess firearms

¹¹³ Nancy Stedman, *What Are Red Flag Laws and Can They Save Lives?*, READERS DIGEST (Jan. 24, 2023), <https://www.rd.com/article/red-flag-laws/>.

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ N.Y. CPLR 6341.

¹¹⁷ N.Y. Penal Law § 265.05 (prohibiting minors under 16 years old from possessing a gun); N.Y. Penal Law § 265.10[5] (prohibiting others from selling or giving guns to anyone under 16 years old).

under a hunting license with parental (12-13) or adult (14-15) supervision.¹¹⁸ Second, a court can issue an ERPO that remains in effect for a full year, meaning it can be obtained to protect a minor at significant risk of committing gun violence who will become of age to legally purchase and possess a weapon while the ERPO is in place. Third, ERPO laws are designed to address imminent threats; thus, a temporary civil ERPO authorizes law enforcement to immediately deescalate situations where a minor's gun possession is unlawful, either removing the firearm if the individual is not permitted to have firearms and/or ensuring its safe storage with an adult family member if it was obtained from them.¹¹⁹ The extent to which pre-existing laws may have been violated during the crisis can be addressed after the initial deadly threat has been averted.

¹¹⁸ N.Y. Penal Law § 265.05; N.Y. Envtl. Conserv. Law §§ 11-0701[1]; 11-0929, 11-0931.

¹¹⁹ In practice, after law enforcement officers explain to family members that if they do not relinquish the firearm and they may be held responsible if the teen who has threatened harm and gains access to the firearm, some family members voluntarily relinquish their firearm to law enforcement or choose to store it with a federal firearms licensee.

CONCLUSION

Gun violence is wreaking havoc throughout this country and in New York State. ERPO laws like New York's are an important and tailored tool designed to help reduce this epidemic. They provide a well-grounded legal mechanism through which individuals displaying clear warning signs of committing imminent, significant violence towards themselves or others can be temporarily disarmed, diffusing the crisis before it turns into an all-too-familiar gun violence statistic.

Dated: July 28, 2023
New York, NY

Respectfully submitted,

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PRINTING SPECIFICATION STATEMENT

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EXHIBIT B

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OF THE
STATE OF NEW YORK
COUNTY OF ONTARIO**
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Judges

Hon. Craig J. Doran
Hon. Frederick G. Reed
Hon. Brian D. Dennis
Hon. Kristina A. Karle

**Marcilyn L. Morrisey
Chief Clerk and
Commissioner of Jurors**

March 28, 2022

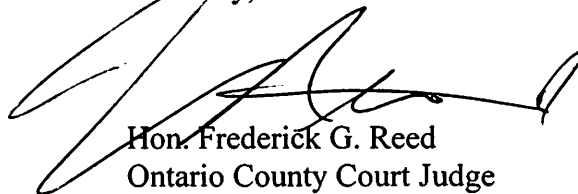
Jason M. Housel, Esq.
66 North Main Street
Canandaigua, New York 14424

RE: **Jeffrey Holtz, ERPO**
Index No. 134102-2022

Dear Counsel:

Enclosed please find a copy of my Decision and Order in the above matter dated March 28, 2023.

Sincerely,



Hon. Frederick G. Reed
Ontario County Court Judge

FGR/gh
Att.

cc: Investigator John Kesel, OC Sheriff's Department
Nathan Thomas, Ontario County Attorney's Office
Ontario County Clerk

STATE OF NEW YORK
COUNTY OF ONTARIO SUPREME COURT

INV. JOHN KESEL, ONTARIO COUNTY SHERIFF'S
DEPARTMENT

Petitioner,

DECISION and ORDER
Index No. 134102-2022

vs

JEFFREY HOLTZ, dob 3/12/65

Respondent.

PRESENT: Hon. Frederick G. Reed
Acting Supreme Court Justice

Appearances: Ontario County Sheriff's Investigator
John Kesel, Petitioner

Jason M. Housel, Esq.
Attorney for the Respondent

Upon the application of Jason M. Housel, Esq., attorney for the Respondent, I have reviewed and will adopt the reasoning and decision of Monroe County Supreme Court Justice Hon. Thomas E. Moran in G.W. vs. C.N., 78 Misc 3d 289, 181 N.Y.S. 3d 432 (December 22, 2022) and find CPLR Article 63-a, as applied to the instant application for a Temporary Extreme Risk Protection Order ("TERPO") constitutes a violation of the Respondent's Constitutional Second Amendment rights without due process.

Specifically, the statute as written fails to afford the Respondent procedural guarantees, such as a physician's determination that he presented a condition "likely to result in serious harm" before the Petitioner filed for a Temporary Extreme Risk Protection Order or an Extreme Risk Protection Order (ERPO). As stated by Justice Moran "the Temporary Extreme Risk Protection Order (TERPO) and "Extreme Risk Protection Order" (ERPO) are deemed to be unconstitutional by this Court as CPLR Article 63-a is presently drafted. It can not be stated clearly enough that the

Second Amendment is not a second class right, nor should it ever be treated as such” id at 441.

Accordingly, it is hereby

ORDERED, that the above-entitled petition is hereby dismissed, in its entirety, and any temporary order or final order issued by this Court pursuant to the instant action is, hereby, vacated.

This constitutes the Decision and Order of the Court.

Signed this 28th day of March 2023
at Canandaigua, New York

A handwritten signature in black ink, appearing to read 'F. Reed', written over a horizontal line.

Hon. Frederick G. Reed
Acting Supreme Court Justice