
New York Supreme Court

Appellate Division—Fourth Department

NEW YORK STATE POLICE,

Docket No.:
CA 25-00443

Petitioner-Appellant,

— against —

DAVID J. KINGSLEY II,

Respondent-Respondent.

MOTION FOR LEAVE TO FILE AN *AMICUS* BRIEF

FRESHFIELDS US LLP
Jennifer B. Loeb, Esq.
700 13th Street NW, 10th Floor
Washington, DC 20005
(202) 777-4500
jennifer.loeb@freshfields.com

FRESHFIELDS US LLP
Aaron Stanislawski, Esq.
Rebecca Sokolow, Esq.
Victoria Abut, Esq.
Three World Trade Center, 52nd Floor
175 Greenwich Street
New York, New York 10007
(212) 277-4000
aaron.stanislawski@freshfields.com
becky.sokolow@freshfields.com
victoria.abut@freshfields.com

Counsel for Amici Curiae

Jefferson County Clerk's Index No. EF2024-00005747



COUNSEL PRESS

(800) 4-APPEAL • (381677)

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION, FOURTH DEPARTMENT

In the Matter of the Application of

New York State Police,

Petitioner-Appellant,

vs.

David J. Kingsley II,

Respondent-Respondent.

**NOTICE OF MOTION FOR LEAVE
TO FILE A BRIEF AS *AMICI CURIAE***


Docket No.: CA 25-00443

PLEASE TAKE NOTICE that upon the annexed affirmation of Jennifer B. Loeb, dated June 5, 2025, prospective *amici curiae*, Brady Center to Prevent Gun Violence and Giffords Law Center to Prevent Gun Violence, will move this Court on June 5, 2025, or as soon thereafter as counsel may be heard, at the M. Dolores Denman Courthouse located at 50 East Avenue, Suite 200, Rochester, N.Y. 14604, for an order pursuant to 22 N.Y.C.R.R. § 1250.4(f), granting them leave to serve and file the accompanying brief as *amici curiae*, in support of reversal.

PLEASE TAKE FURTHER NOTICE that pursuant to C.P.L.R. § 2214(b), answering affidavits and notices of cross-motion, if any, must be served upon the undersigned attorney at least seven days prior to the return date of this motion.

Dated: June 5, 2025
Washington, DC 20005

Respectfully submitted,

/s/ 

Jennifer B. Loeb

FRESHFIELDS US LLP

700 13th Street NW, 10th Floor

Washington, DC 20005

(202) 777-4500

jennifer.loeb@freshfields.com

*Counsel for Proposed Amici Curiae
Brady Center to Prevent Gun
Violence
and Giffords Law Center to Prevent
Gun Violence*

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FOURTH DEPARTMENT

In the Matter of the Application of

New York State Police,

Petitioner-Appellant,

vs.

David J. Kingsley II,

Respondent-Respondent.

**AFFIRMATION OF JENNIFER B.
LOEB, ESQ. IN SUPPORT OF
MOTION FOR LEAVE TO FILE A
BRIEF AS *AMICI CURIAE***

Docket No.: CA 25-00443

JENNIFER B. LOEB, an attorney duly admitted to practice law before the courts of the State of New York, hereby affirms the following under penalty of perjury:

1. I am a Partner at Freshfields US LLP and counsel for proposed *amici curiae* Brady Center to Prevent Gun Violence and Giffords Law Center to Prevent Gun Violence (collectively, “*Amici*”).

2. I am familiar with the facts and circumstances of this matter, and I submit this affirmation in support of *Amici*’s motion for leave to file a brief, *amici curiae*, urging a reversal of the Order of the Supreme Court, Jefferson County (Ramseier, J.), dated February 5, 2025, which denied Petitioner-Appellant New York State Police the issuance of an Extreme Risk Protection Order (“ERPO”), and from which Petitioner-Appellant appeals.

3. *Amici* have an interest in the issues to be resolved in this litigation, as detailed in the proposed *amici curiae* brief, attached hereto as Exhibit A.

4. *Amici* are two non-profit organizations. Brady Center to Prevent Gun Violence is the Nation's oldest non-partisan, non-profit organization dedicated to reducing gun violence through education, research, legal advocacy, and political action. Giffords Law Center to Prevent Gun Violence is a non-profit policy organization serving lawmakers, advocates, legal professionals, gun violence survivors, and others seeking to reduce gun violence and improve the safety of their communities.

5. *Amici* have critical experience in gun violence prevention efforts, and as part of their work they support the development and implementation of common-sense gun safety regulations, such as N.Y. C.P.L.R. § 6340 *et seq.* (the "New York ERPO Law"). *Amici* have a strong interest in this Court reaching the correct interpretation of the New York ERPO Law, which helps prevent firearm suicides and other gun violence by providing a judicial process through which individuals who are a danger to themselves or others may be required to temporarily surrender firearms in their possession.

6. This case is of significant public interest because the New York ERPO Law is designed to protect New Yorkers by authorizing courts to issue

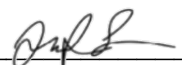
ERPOs based on factors that correlate to future violence, and its correct application helps to prevent gun violence in New York.

7. *Amici*'s proposed brief provides this Court with arguments that the parties to the action herein have not otherwise fully developed in their respective briefs. *Amici*'s proposed brief highlights empirical evidence about specific predictors of violence that are relevant to the facts of this case, and that should therefore be considered by this Court in making its determination under the New York ERPO Law. In particular, the proposed brief describes the ample evidence that demonstrates the propriety of an ERPO where a respondent has a history of violence and exposure to significant amounts of excessive violence.

8. *Amici* have an important perspective to add in this appeal and will provide the Court with invaluable insight regarding the stakes of this case.

WHEREFORE, the motion by Brady Center to Prevent Gun Violence and Giffords Law Center to Prevent Gun Violence for leave to file the accompanying brief as *amici curiae* should be granted.

Dated: Washington, D.C.
June 5, 2025

/s/ 
Jennifer B. Loeb

New York Supreme Court

Appellate Division—Fourth Department

NEW YORK STATE POLICE,

Petitioner-Appellant,

Docket No.:
CA 25-00443

— against —

DAVID J. KINGSLEY II,

Respondent-Respondent.

BRIEF FOR *AMICI CURIAE* BRADY CENTER TO PREVENT GUN VIOLENCE AND GIFFORDS LAW CENTER TO PREVENT GUN VIOLENCE

FRESHFIELDS US LLP
Jennifer B. Loeb, Esq.
700 13th Street NW, 10th Floor
Washington, DC 20005
(202) 777-4500
jennifer.loeb@freshfields.com

FRESHFIELDS US LLP
Aaron Stanislawski, Esq.
Rebecca Sokolow, Esq.
Victoria Abut, Esq.
Three World Trade Center, 52nd Floor
175 Greenwich Street
New York, New York 10007
(212) 277-4000
aaron.stanislawski@freshfields.com
becky.sokolow@freshfields.com
victoria.abut@freshfields.com

Counsel for Amici Curiae

Jefferson County Clerk's Index No. EF2024-00005747



COUNSEL PRESS

(800) 4-APPEAL • (381677)

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
INTEREST OF <i>AMICI CURIAE</i>	1
INTRODUCTION	1
ARGUMENT	3
A. ERPO Laws Reduce Gun Violence and Save Lives	3
1. <i>Background on ERPO Laws in the United States</i>	3
2. <i>ERPO Laws Are Proven to Be Effective</i>	4
3. <i>The New York ERPO Law Prevents Gun Violence</i>	6
B. The New York ERPO Law Directs the Court to Consider a Broad Range of Predictors of Violence	8
C. Courts Should Issue an ERPO Where a Respondent Meets Factors that Are Predictors of Violence	13
1. <i>Prior Acts of Violence</i>	13
2. <i>Exposure to violence</i>	17
3. <i>Respondent meets these critical factors</i>	20
CONCLUSION.....	21

TABLE OF AUTHORITIES

Statutes	Page(s)
A. 2689, 2019-2020 Reg. Sess. (N.Y. 2019)	9
Bipartisan Safer Communities Act, Pub. L. No. 117-159, 136 Stat. 1313 (2022).....	4
N.Y. C.P.L.R. 63-A §6342.....	8, 10
N.Y. C.P.L.R. 63-A § 6342(2).....	10, 11, 13
N.Y. C.P.L.R. 63-A § 6342(2)(f).....	10, 18
N.Y. C.P.L.R. § 6340.....	<i>passim</i>
 Other Authorities	 Page(s)
Aaron Shev et al., <i>Importance of Categories of Crime for Predicting Future Violent Crime Among Handgun Purchasers in California</i> , 10 Inj. epidemiology 1 (2023).....	14
Alfred Friedman, <i>Substance Use/Abuse as a Predictor to Illegal and Violent Behavior: A Review of the Relevant Literature</i> , 3 Aggression & Violent Behav. 339 (1998).....	11
Andrew Donovan, 'There's something going on:' Violent prison culture allowed inmate deaths, governor says, Local SYR (Apr. 21, 2025, 6:40 PM), https://www.localsyr.com/marcy-correctional-facility-inmates-death/theres- something-going-on-violent-prison-culture-allowed-inmate-deaths-governor- says/	21
<i>Annual Gun Law Scorecard</i> , Giffords Law Center to Prevent Gun Violence (2022), https://giffords.org/lawcenter/resources/scorecard/	5
Bob Fredericks, <i>Man Becomes First to Lose Guns under New York's 'Red Flag' Law</i> , New York Post (Sept. 13, 2019, 9:50 PM), https://nypost.com/2019/09/13/man-becomes-first-to-lose-guns-under-new- yorks-red-flag-law/	7

Casey Pritchard, <i>Marcy Correctional report details abuse allegations going back to 2022</i> , Utica Observer Dispatch (Feb. 3, 2025, 5:03 AM), https://www.uticaod.com/story/news/local/2025/02/03/marcy-correctional-report-details-abuse-allegations-going-back-to-2022-robert-brooks/78003024007/	21
Charlie Specht, <i>Akron Middle School student with access to guns threatened to shoot ‘every human in sight’</i> , WGRZ (Apr. 22, 2024, 11:45 AM), https://www.wgrz.com/article/news/education/akron-middle-school-student-access-to-guns-threatened-shooting/71-8d412147-604d-44d5-8abe-4254b7e7a6ad	7
Conor Wight, <i>Marcy corrections officers involved in pattern of abuse and violence, lawsuits show</i> , CNY Central (Dec. 30, 2024, 10:50 PM), https://cnycentral.com/news/i-team/marcy-correctional-officers-involved-in-pattern-of-abuse-and-violence-lawsuits-show	20
Daria Roithmayr, <i>The Dynamics of Excessive Force</i> , 2016 U. Chi. Legal F. 407 (2016)	19
<i>Delivery of S. 2451/Assemb. 2689 Before Assemb.</i> , 2019-2020 Reg. Sess. (N.Y. 2019), https://www2.assembly.state.ny.us/write/upload/transcripts/2019/1-29-19.pdf (statement of Edward Braunstein, Assemb.)	12
<i>Delivery of S. 2451/Assemb. 2689 Before Assemb.</i> , 2019-2020 Reg. Sess. (N.Y. 2019), https://www2.assembly.state.ny.us/write/upload/transcripts/2019/1-29-19.pdf (statement of Jo Anne Simon, Assemb.)	9, 12, 18
Diana Doumas et al., <i>The intergenerational transmission of aggression across three generations</i> , 9 J. Family Violence 157 (1994)	18
Ellicott C. Matthay et al., <i>Assessing Links Between Alcohol Exposure and Firearm Violence: A Scoping Review Update</i> , 45 Alcohol Rsch. Current Revs. 1, 9 (Jan. 10, 2025), https://pmc.ncbi.nlm.nih.gov/articles/PMC11737877/pdf/arc-45-1-1.pdf	11
Emma E. McGinty & Daniel W. Webster, <i>The Roles of Alcohol and Drugs in Firearm Violence</i> , 177 JAMA Internal Med. 324, 324 (2017)	11
Extreme Risk Protection Laws: New York, John Hopkins Bloomberg School of Public Health (Dec. 12, 2022), https://americanhealth.jhu.edu/erpo-state/new-york	12

<i>Fed. Bureau Investigation, U.S. Dep’t Just., A Study of the Pre-Attack Behaviors of Active Shooters in the United States Between 2000 and 2013, (2018),</i> <i>https://www.fbi.gov/file-repository/pre-attack-behaviors-of-active-shooters-in-us-2000-2013.pdf/view</i>	6
<i>Frederick Rivara et al., Alcohol and Illicit Drug Abuse and the Risk of Violent Death in the Home, 278 JAMA: J. Am. Med. Ass’n 569 (1997)</i>	11
<i>Garen J. Wintemute et al., Extreme Risk Protection Orders Intended to Prevent Mass Shootings, 171 Annals Internal Med. 655 (2019).</i>	6
<i>Greg Ridgeway, The Role of Individual Officer Characteristics in Police Shootings, 687 Annals Am. Acad. Pol. Soc. Sci. 58, 64 (2020)</i>	16
<i>Gun Safety Policies Save Lives, Everytown Research & Policy (2023),</i> <i>https://everytownresearch.org/rankings</i>	5
<i>Jack Springgate, Four Detroit police officers’ firearms confiscated under Michigan’s red flag law, report says, CBS Detroit (Feb. 28, 2025, 6:37 PM),</i> <i>https://www.cbsnews.com/detroit/news/michigan-red-flag-law-detroit-police/</i>	17
<i>Jared W. Snow, Exploring the Relationship Between Domestic Violence and Workplace Violence 61 (Oct. 2022) (Ph.D dissertation, George Fox University)</i>	15
<i>Jeffrey W. Swanson et al., Criminal Justice and Suicide Outcomes with Indiana’s Risk-based Gun Seizure Law, 47 J. Am. Acad. Psych. L. 188 (2019).</i>	5
<i>Jeffrey W. Swanson, Preventing Firearm Tragedies by the Numbers—Remembering Why It Matters, JAMA Network Open 1, 1 (June 12, 2024),</i> <i>https://tinyurl.com/4rhmvucy (citing Jeffrey W. Swanson et al., Implementation And Effectiveness of Connecticut’s Risk-Based Gun Removal Law: Does it Prevent Suicides?, 80 Law And Contemporary Problems 179 (2017), https://scholarship.law.duke.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=4830&context=lcp)</i>	5
<i>Jeffrey W. Swanson et al., Suicide Prevention Effects of Extreme Risk Protection Order Laws in Four States, 52 J. AM. ACAD. PSYCH. & L. 327 (citing Aaron J. Kivisto & Peter Lee Phalen, Effects of Risk-Based Firearm Seizure Laws in Connecticut and Indiana on Suicide Rates, 1981-2015, 69 PSYCH. SERVS. 855 (2018))</i>	5

John Gramlich, <i>What the data says about gun deaths in the U.S.</i> , Pew Research Center (Mar. 5, 2025), https://www.pewresearch.org/short-reads/2025/03/05/what-the-data-says-about-gun-deaths-in-the-us/	8
Joke Geeraert et al., <i>Violence by Association or Participation? Examining the Differential Impact of Violent Co-Offenders on Future Offending Behavior</i> , CrimRxiv 1 (2024), https://assets.pubpub.org/m112tkmb/Preprint%20(in)direct%20exposure%20to%20violence-11732540516943-01732542016128.pdf	14
Jordan E. DeVlyder et al., <i>Association of Exposure to Police Violence with Prevalence of Mental Health Symptoms Among Urban Residents in the United States</i> , JAMA Network Open 1(Nov. 21, 2018).....	19
Jordan E. DeVlyder et al., <i>Elevated Prevalence of Suicide Attempts Among Victims of Police Violence in the USA</i> , 94 J. Urb. Health (May 22, 2017), https://link.springer.com/article/10.1007/s11524-017-0160	19
Ken Sturtz, <i>Scriba lawyer accused of threatening Onondaga County judge; guns seized</i> , Oswego County News Now (Jan. 19, 2025), https://www.oswegocountynewsnow.com/news/scriba-lawyer-accused-of-threatening-onondaga-county-judge-guns-seized/article_1ddf4f0e-9610-11ee-96e4-972855fd797a.html	7
Leonor Boulin Johnson, <i>Burnout and Work and Family Violence Among Police: Gender Comparisons</i> , in <i>Domestic Violence by Police Officers: A Compilation of Papers Submitted to the Domestic Violence by Police Officers Conference at the FBI Academy, Quantico, VA</i> (Donald C. Sheelan ed., 2000)	16
Liane Greenberg & Julian Barling, <i>Predicting Employee Aggression Against Coworkers, Subordinates and Supervisors: The Roles of Person Behaviors and Perceived Workplace Factors</i> , 20 J. Organizational Behav. 897 (1999).....	15
Lori Mack, <i>Connecticut Remembers Lottery Shooting That Prompted First-Of-Its-Kind Gun Legislation</i> , 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	3
Marie Ouellet et al., <i>Network Exposure and Excessive Use of Force: Investigating the Social Transmission of Police Misconduct</i> , 18 Criminology & Pub. Pol’y 675 (2019).....	19

Mario J. Scalora et al., <i>Nonfatal Workplace Violence Risk Factors: Data From a Police Contact Sample</i> , 18 J. Interpersonal Violence 310 (2003)	15
Ming Cui et al., <i>Intergenerational Transmission of Relationship Aggression: A Prospective Longitudinal Study</i> , 24 J. Family Psych. 688 (2010)	18
Office of Justice Research and Performance, <i>Monthly GIVE Shooting Activity Report</i> , New York State Division of Criminal Justice Services (May. 8, 2025), https://www.criminaljustice.ny.gov/crimnet/ojsa/GIVE%20Monthly.pdf	8
Office of Public Affairs, <i>Justice Department announces over \$200 million in investments in state crisis intervention</i> , U.S. Dep’t of Justice (Feb. 14, 2023), https://www.justice.gov/opa/pr/justice-department-announces-over-200-million-investments-state-crisis-intervention	4
Office of Public Affairs, <i>Justice Department Launches the National Extreme Risk Protection Order Resource Center</i> , U.S. Dep’t of Justice (Mar. 23, 2024), https://www.justice.gov/archives/opa/pr/justice-department-launches-national-extreme-risk-protection-order-resource-center	4
Orjan Falk et al., <i>The 1% of the Population Accountable for 63% of All Violent Crime Convictions</i> , 49 Soc. Psychiatry & Psychiatric Epidemiology 559 (2014)	14
Paolo Campana & Andrea Giovannetti, <i>Predicting Violence in Merseyside: A Network-Based Approach Using No Demographic Information</i> , Cambridge J. Evidence-Based Policing 89 (2020)	13
Philip Matthew Stinson et al., <i>Police Integrity Lost: A Study of Law Enforcement Officers Arrested</i> 44 (2016), https://www.ojp.gov/pdffiles1/nij/grants/249850.pdf	16
Press Release, Carl E. Heastie, Assemb. Speaker, Assembly Passes Package of Legislation to Strengthen State’s Gun Laws and Protect New York Communities (Jun. 2, 2022), https://nyassembly.gov/Press/?sec=story&story=102242	12
Press Release, Kathy Hochul, Governor, Governor Hochul Announces Major Reduction in Gun Violence and Signs Legislation Strengthening New York’s Nation-Leading Gun Laws (Oct. 9, 2024), https://www.governor.ny.gov/news/governor-hochul-announces-major-reduction-gun-violence-and-signs-legislation-strengthening-new	6

Press Release, Kathy Hochul, Governor, Governor Hochul Announces Major Progress in Bringing Down Gun Violence Throughout New York State (May 16, 2024), https://www.governor.ny.gov/news/governor-hochul-announces-major-progress-bringing-down-gun-violence-throughout-new-york-state	8
Press Release, Kathy Hochul, Governor, New State Crime Stats: Governor Hochul Announces Gun Violence in New York Has Declined to Lowest on Record (Oct. 17, 2024), https://www.governor.ny.gov/news/new-state-crime-stats-governor-hochul-announces-gun-violence-new-york-has-declined-lowest	8
Press Release, N.Y. State Assemb., Senator Brian Kavanagh and Assemblymember Jo Anne Simon Announce Package of Sweeping Gun Violence Prevention Bills: Coalition celebrates passage of Extreme Risk Protection Order (ERPO) bill and other legislation that will save New Yorkers' lives (Jan. 29, 2019), https://assembly.state.ny.us/mem/Jo-Anne-Simon/story/84760	9
Rachel Dalafave, <i>An Empirical Assessment of Homicide and Suicide Outcomes with Red Flag Laws</i> , 52 LOY. U. CHI. L. J. 867 (2021)	5
Richard Felson & Jeremy Staff, <i>The Effects of Alcohol Intoxication on Violent Versus Other Offending</i> , 37 Crim. Just. & Behav. 1343 (2010).....	11
Sierra Tufts, <i>State works to remove guns from former South Whitley police officer involved in viral traffic stop</i> , Wane 15 (Aug. 2, 2024, 4:07 PM), https://www.wane.com/top-stories/state-works-to-remove-guns-from-former-south-whitley-police-officer-involved-in-viral-traffic-stop/	17
Univ. of Mich. Inst. for Firearm Prevention, <i>ERPO Laws by State</i> , https://firearminjury.umich.edu/erpo-by-state/ (last visited May 13, 2025).....	4
Val, <i>Man threatening to kill motorists at Wappingers traffic lights apprehended</i> , Hudson Valley Post (Feb. 29, 2024), https://hudsonvalleypost.com/ring-neighbors-firearms-arrest-wappingers/	7

INTEREST OF *AMICI CURIAE*

Amici curiae are two non-profit organizations with critical experience in gun safety legislation. Brady Center to Prevent Gun Violence is the Nation's oldest non-partisan, non-profit organization dedicated to reducing gun violence through education, research, legal advocacy, and political action, and Giffords Law Center to Prevent Gun Violence is a non-profit policy organization serving lawmakers, advocates, legal professionals, gun violence survivors, and others seeking to reduce gun violence and improve the safety of their communities. As part of their work, *Amici* support common-sense gun safety regulations, such as N.Y. C.P.L.R. § 6340 *et seq.* (the “New York ERPO Law”).

Amici have a strong interest in this Court reaching the correct interpretation of the New York ERPO Law, which helps prevent firearm suicides and other gun violence by providing a judicial process through which individuals who are a danger to themselves or others may be required to temporarily surrender firearms in their possession.

INTRODUCTION

Extreme Risk Protection Orders (“ERPOs”), such as those considered under the New York ERPO Law, help prevent gun violence by requiring a person to temporarily surrender their firearms after an evidentiary showing and a judicial determination that the person has demonstrated warning signs of committing

violence. This case concerns whether the Court should grant an ERPO against an individual who allegedly participated in beating an unarmed man in custody to death. *Amici* respectfully submit this brief to explain how the New York ERPO Law is designed to protect New Yorkers by authorizing courts to issue ERPOs based on factors that correlate to future violence, and to highlight empirical evidence about specific predictors of violence relevant to this case.

First, Amici recount the history and purpose of ERPO laws, which have been enacted by 21 states (including New York) and the District of Columbia. Modern-day ERPOs were first conceived in the aftermath of mass shootings in Connecticut and California, with the goal of preventing similar massacres in the future. Since states began enacting ERPO laws over 25 years ago, research has shown that ERPO laws play a key role in effectively preventing mass shootings, suicides, and other gun violence. The New York ERPO Law has been particularly effective in achieving the critical purpose of preventing mass violence.

Second, Amici explain that the New York ERPO Law is intentionally broad, and it is designed to allow courts considering whether to issue an ERPO to weigh a variety of factors, each of which is a predictor of future violence. The New York ERPO Law affirmatively lists seven factors that courts *must* consider when reviewing an ERPO petition, but the law's text and structure make clear that this is a non-exhaustive list, and that courts should consider other relevant factors. Because

each listed factor can be understood as a predictor of future violence, courts should also look at relevant extra-statutory factors that similarly are proven predictors of violence, where relevant.

Finally, Amici describe the ample evidence that demonstrates the propriety of an ERPO where, as here, a respondent has a history of violence and exposure to significant amounts of excessive violence. *Amici* explain that these are exactly the kinds of factors that the New York legislature explicitly and implicitly suggested courts should rely on and substantially weigh when determining whether to grant an ERPO, because these factors are empirically proven to help predict future violence in accordance with the purpose of the New York ERPO law.

ARGUMENT

A. ERPO Laws Reduce Gun Violence and Save Lives

1. Background on ERPO Laws in the United States

States began to enact ERPO laws over 25 years ago, after recognizing that many types of gun violence could be avoided if authorities were able to temporarily remove an individual's access to firearms when that person showed clear and predictable signs of impending gun violence.¹ Since then, 21 states and the District

¹ The first ERPO law was enacted in Connecticut in 1999, after a shooter had “displayed clear signs of troubling behavior well in advance” of an incident that resulted in four casualties. *See* 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>.

of Columbia have enacted some variation of ERPO or “red flag” laws.² ERPOs have also served a central role in bipartisan federal efforts to reduce gun violence.³ For example, in February 2023, the United States Department of Justice (“DOJ”) announced \$231 million worth of awards across 49 states to fund state crisis intervention programs, specifically including those that implement ERPO laws.⁴ As part of this effort, the DOJ also launched the National Extreme Risk Protection Order Resource Center to provide training and technical assistance to law enforcement officials, prosecutors, attorneys, judges, clinicians, victim service and social service providers, community organizations, and behavioral health professionals responsible for implementing ERPO laws.⁵

2. ERPO Laws Are Proven to Be Effective

Legislators and the DOJ have made ERPOs central to their gun violence prevention efforts because they work: states with stronger gun safety laws, including ERPO laws, have lower rates of gun violence than states with weak or non-existent

² Univ. of Mich. Inst. for Firearm Prevention, *ERPO Laws by State*, <https://firearminjury.umich.edu/erpo-by-state/> (last visited May 13, 2025).

³ See, e.g., Bipartisan Safer Communities Act, Pub. L. No. 117-159, 136 Stat. 1313 (2022).

⁴ Office of Public Affairs, *Justice Department announces over \$200 million in investments in state crisis intervention*, U.S. DEP’T OF JUSTICE (Feb. 14, 2023), <https://www.justice.gov/opa/pr/justice-department-announces-over-200-million-investments-state-crisis-intervention>.

⁵ Office of Public Affairs, *Justice Department Launches the National Extreme Risk Protection Order Resource Center*, U.S. DEP’T OF JUSTICE (Mar. 23, 2024), <https://www.justice.gov/archives/opa/pr/justice-department-launches-national-extreme-risk-protection-order-resource-center>.

gun safety laws.⁶ Indeed, states with the weakest gun laws, including those without ERPO laws, tend to have the highest gun death rates in the nation.⁷

There is mounting evidence that ERPOs dramatically reduce deaths by suicide and mass shootings.⁸ Empirical studies indicate that one suicide is averted for every 10 to 20 ERPOs issued.⁹ Studies of Connecticut's and Indiana's ERPO laws (which resemble the New York ERPO Law) also found that they were directly linked to a 7.5% and 13.7% reduction in firearm suicide, respectively, over a 10-year period.¹⁰ Additionally, and of great significance, a California study of 21 ERPOs that were issued after respondents showed clear signs of intent to commit mass shootings

⁶*Annual Gun Law Scorecard*, GIFFORDS LAW CENTER TO PREVENT GUN VIOLENCE (2022), <https://giffords.org/lawcenter/resources/scorecard/>.

⁷ *Id.* See also *Gun Safety Policies Save Lives*, EVERYTOWN RESEARCH & POLICY (2023), <https://everytownresearch.org/rankings>.

⁸ See Rachel Dalafave, *An Empirical Assessment of Homicide and Suicide Outcomes with Red Flag Laws*, 52 LOY. U. CHI. L. J. 867 (2021) (providing empirical evidence that ERPOs have contributed to lower rates of suicide since their inception in 1999); see also Garen J. Wintemute et al., *Extreme Risk Protection Orders Intended to Prevent Mass Shootings*, 171 ANNALS INTERNAL MED. 655, 658–59 (2019).

⁹ Jeffrey W. Swanson, *Preventing Firearm Tragedies by the Numbers—Remembering Why It Matters*, JAMA NETWORK OPEN 1, 1 (June 12, 2024), <https://tinyurl.com/4rhmvucy> (citing Jeffrey W. Swanson et al., *Implementation And Effectiveness of Connecticut's Risk-Based Gun Removal Law: Does it Prevent Suicides?*, 80 LAW AND CONTEMPORARY PROBLEMS 179 (2017), <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=4830&context=lcp>); see also Jeffrey W. Swanson et al., *Criminal Justice and Suicide Outcomes with Indiana's Risk-based Gun Seizure Law*, 47 J. AM. ACAD. PSYCH. L. 188, 193, 196 (2019).

¹⁰ Jeffrey W. Swanson et al., *Suicide Prevention Effects of Extreme Risk Protection Order Laws in Four States*, 52 J. AM. ACAD. PSYCH. & L. 327, 331 (citing Aaron J. Kivisto & Peter Lee Phalen, *Effects of Risk-Based Firearm Seizure Laws in Connecticut and Indiana on Suicide Rates, 1981-2015*, 69 PSYCH. SERVS. 855 (2018)).

revealed that none of these respondents were associated with any mass shootings, suicides, or homicides after the orders were issued.¹¹

ERPOs work because shooters frequently present warning signs ahead of committing gun violence. In 2018, the Federal Bureau of Investigation (“FBI”) issued a study of the pre-attack behaviors of 63 active shooters in the United States between 2000 and 2013.¹² The FBI found that each active shooter displayed an average of four to five concerning behaviors observable to those around that shooter, and 95% of the active shooters studied displayed at least two.¹³ These concerning behaviors relate to the shooter’s mental health, problematic interpersonal interactions, and evidence of the shooter’s violent intentions.¹⁴

3. The New York ERPO Law Prevents Gun Violence

The New York ERPO law has been particularly effective at preventing gun violence. To date, courts across New York have issued over 22,000 ERPOs.¹⁵ These ERPOs have incontestably made New Yorkers safer. For example, the New York

¹¹ Garen J. Wintemute et al., *Extreme Risk Protection Orders Intended to Prevent Mass Shootings*, 171 ANNALS INTERNAL MED. 655, 658–59 (2019).

¹² FED. BUREAU INVESTIGATION, U.S. DEP’T JUST., A STUDY OF THE PRE-ATTACK BEHAVIORS OF ACTIVE SHOOTERS IN THE UNITED STATES BETWEEN 2000 AND 2013, (2018), <https://www.fbi.gov/file-repository/pre-attack-behaviors-of-active-shooters-in-us-2000-2013.pdf/view>.

¹³ *Id.* at 7, 19.

¹⁴ *Id.* at 7.

¹⁵ See Press Release, Kathy Hochul, Governor, Governor Hochul Announces Major Reduction in Gun Violence and Signs Legislation Strengthening New York’s Nation-Leading Gun Laws (Oct. 9, 2024), <https://www.governor.ny.gov/news/governor-hochul-announces-major-reduction-gun-violence-and-signs-legislation-strengthening-new>.

ERPO Law has been used to remove guns from: (1) an attorney who was accused of threatening a family court judge;¹⁶ (2) a man who made statements threatening self-harm after being arrested for shooting a car;¹⁷ (3) a man who was the subject of multiple complaints that he threatened motorists while driving;¹⁸ and (4) the home of a middle school student who had made threats to kill himself, his parents, and members of his school.¹⁹

These stories verify that the New York ERPO law is operating precisely as it was intended: day after day, it is promoting public safety and saving the lives of numerous New Yorkers.

These stories are backed up by empirical data demonstrating that New York's strong gun laws are working, and the evidence shows that New York has seen a dramatic reduction in gun violence in recent years. As of 2023, New York had the

¹⁶ Ken Sturtz, *Scriba lawyer accused of threatening Onondaga County judge; guns seized*, OSWEGO COUNTY NEWS NOW (Jan. 19, 2025), https://www.oswegocountynewsnow.com/news/scriba-lawyer-accused-of-threatening-onondaga-county-judge-guns-seized/article_1ddf4f0e-9610-11ee-96e4-972855fd797a.html.

¹⁷ Bob Fredericks, *Man Becomes First to Lose Guns under New York's 'Red Flag' Law*, NEW YORK POST (Sept. 13, 2019, 9:50 PM), <https://nypost.com/2019/09/13/man-becomes-first-to-lose-guns-under-new-yorks-red-flag-law/>.

¹⁸ Val, *Man threatening to kill motorists at Wappingers traffic lights apprehended*, HUDSON VALLEY POST (Feb. 29, 2024), <https://hudsonvalleypost.com/ring-neighbors-firearms-arrest-wappingers/>.

¹⁹ Charlie Specht, *Akron Middle School student with access to guns threatened to shoot 'every human in sight'*, WGRZ (Apr. 22, 2024, 11:45 AM), <https://www.wgrz.com/article/news/education/akron-middle-school-student-access-to-guns-threatened-shooting/71-8d412147-604d-44d5-8abe-4254b7e7a6ad>.

third lowest rate of gun-related deaths and gun-related suicides in the United States.²⁰ For example, New York saw a 35% reduction in shootings between 2021 and 2023,²¹ a 26% reduction in shooting incidents with injury from January–September 2024 as compared to the same period in 2023,²² and a 9% reduction in shooting incidents with injury from January–April 2025 as compared to the same period in 2024.²³

B. The New York ERPO Law Directs the Court to Consider a Broad Range of Predictors of Violence

The New York ERPO Law has been effective because it is designed to allow courts reviewing ERPO petitions to consider a broad range of statutory and non-statutory factors proven to be predictors of violence. The New York ERPO Law is intended to prevent individuals who are “likely to engage in conduct that would result in serious harm to himself, herself or others” from purchasing or possessing a gun.²⁴ As described in an accompanying legislative report, by creating a procedural

²⁰ John Gramlich, *What the data says about gun deaths in the U.S.*, PEW RESEARCH CENTER (Mar. 5, 2025), <https://www.pewresearch.org/short-reads/2025/03/05/what-the-data-says-about-gun-deaths-in-the-us/>.

²¹ Press Release, Kathy Hochul, Governor, Governor Hochul Announces Major Progress in Bringing Down Gun Violence Throughout New York State (May 16, 2024), <https://www.governor.ny.gov/news/governor-hochul-announces-major-progress-bringing-down-gun-violence-throughout-new-york-state>.

²² Press Release, Kathy Hochul, Governor, New State Crime Stats: Governor Hochul Announces Gun Violence in New York Has Declined to Lowest on Record (Oct. 17, 2024), <https://www.governor.ny.gov/news/new-state-crime-stats-governor-hochul-announces-gun-violence-new-york-has-declined-lowest>.

²³ Office of Justice Research and Performance, *Monthly GIVE Shooting Activity Report*, NEW YORK STATE DIVISION OF CRIMINAL JUSTICE SERVICES (May. 8, 2025) <https://www.criminaljustice.ny.gov/crimnet/ojsa/GIVE%20Monthly.pdf>.

²⁴ N.Y. C.P.L.R. 63-A §6342.

mechanism by which the court can intervene where an individual “exhibit[s] warning signs that they pose a risk of serious harm,”²⁵ the law seeks to prevent gun violence committed by those who “[are] believed to pose a severe threat” to themselves or others.²⁶

To assess whether a person poses a risk of serious harm, the law directs courts to consider whether certain predictors of violence are present. Specifically, courts are required to consider the following factors:

- (a) a threat or act of violence or use of physical force directed toward self, the petitioner, or another person;
- (b) a violation or alleged violation of an order of protection;
- (c) any pending charge or conviction for an offense involving the use of a weapon;

²⁵ *Delivery of S. 2451/Assemb. 2689 Before Assemb.*, 2019-2020 Reg. Sess. (N.Y. 2019), <https://www2.assembly.state.ny.us/write/upload/transcripts/2019/1-29-19.pdf> (statement of Jo Anne Simon, Assemb.) (“When people exhibit warning signs that they pose a risk of serious harm to themselves or others, family and household members often observe these signs firsthand, but they feel powerless and unable to intervene, even with law enforcement support, before a tragedy occurs. . . . A temporary Extreme Risk Protection Order would restrict the person’s access to firearms if they pose a serious risk of harm.”); *see also* Press Release, N.Y. State Assemb., Senator Brian Kavanagh and Assemblymember Jo Anne Simon Announce Package of Sweeping Gun Violence Prevention Bills: Coalition celebrates passage of Extreme Risk Protection Order (ERPO) bill and other legislation that will save New Yorkers’ lives (Jan. 29, 2019), <https://assembly.state.ny.us/mem/Jo-Anne-Simon/story/84760> (quoting bill sponsor Senator Brian Kavanagh as stating that ERPOs “temporarily restrict[] access to guns for individuals when evidence shows they are likely to harm themselves or others,” and bill sponsor Assemblymember Jo Anne Simon as stating that ERPOs serve as a mechanism to intervene when there are “warning signs that an individual close to us poses a risk of serious harm to themselves or others”).

²⁶ A. 2689, 2019-2020 Reg. Sess. (N.Y. 2019) (Memorandum in Support of Legislation) (identifying as a justification for the bill that New York previously lacked a procedure through which a court could effectuate this purpose).

- (d) the reckless use, display or brandishing of a firearm, rifle or shotgun;
- (e) any history of a violation of an extreme risk protection order;
- (f) evidence of recent or ongoing abuse of controlled substances or alcohol;
- or
- (g) evidence of recent acquisition of a firearm, rifle, shotgun or other deadly weapon or dangerous instrument, or any ammunition therefor.²⁷

Notably, this list includes factors that are not themselves inherently violent behaviors. For example, the statute requires courts to consider whether there is evidence that the respondent has recently abused, or continues to abuse, controlled substances or alcohol.²⁸ While alcohol and drug abuse is not an inherently violent behavior, the New York legislature recognized that substance abuse is a predictor of future violence, including interpersonal violence and suicide, and gun violence in

²⁷ N.Y. C.P.L.R. 63-A §6342(2).

²⁸ N.Y. C.P.L.R. 63-A § 6342(2)(f).

particular.²⁹ For example, a study of adults in large urban areas found that those who abused alcohol were at higher risk of both homicide and suicide.³⁰

While the New York legislature directed courts to consider these specific factors, the legislature also recognized that the statute did not and could not capture every relevant predictor of violence that might bear on an ERPO petition. To account for this, the statute requires that, in determining whether to issue an ERPO, a court must consider “*any relevant factors including, but not limited to,*” the statute’s list of enumerated factors.³¹

The statute’s structure also demonstrates that the law was designed to allow courts to consider other credible predictors of violence, including those specific to

²⁹ See Alfred Friedman, *Substance Use/Abuse as a Predictor to Illegal and Violent Behavior: A Review of the Relevant Literature*, 3 AGGRESSION & VIOLENT BEHAV. 339 (1998) (“[D]rug abuse, in addition to alcohol abuse, is implicated either as a cause, or as a predisposing factor, in violent behavior.”); see also Richard Felson & Jeremy Staff, *The Effects of Alcohol Intoxication on Violent Versus Other Offending*, 37 CRIM. JUST. & BEHAV. 1343 (2010) (finding that intoxication “plays its strongest role in homicide and physical and sexual assault”); Emma E. McGinty & Daniel W. Webster, *The Roles of Alcohol and Drugs in Firearm Violence*, 177 JAMA INTERNAL MED. 324, 324 (2017) (“The best available evidence suggests that (1) alcohol misuse increases the risks for firearm homicide perpetration and suicide, and (2) involvement in illegal drugs sales increases the risks of firearm homicide perpetration and victimization.”); Ellicott C. Matthay et al., *Assessing Links Between Alcohol Exposure and Firearm Violence: A Scoping Review Update*, 45 ALCOHOL RSCH. CURRENT REVS. 1, 9 (Jan. 10, 2025), <https://pmc.ncbi.nlm.nih.gov/articles/PMC11737877/pdf/arc45-1-1.pdf> (finding that existing literature “continues to support a causal relationship between alcohol exposure and firearm violence”).

³⁰ Frederick Rivara et al., *Alcohol and Illicit Drug Abuse and the Risk of Violent Death in the Home*, 278 JAMA: J. AM. MED. ASS’N 569 (1997) (finding that “risks of homicide and suicide associated with alcohol or illicit drug use were elevated, as were the risks of violent death associated with several indicators of chronic alcohol abuse”).

³¹ N.Y. C.P.L.R. 63-A § 6342(2) (emphasis added).

individual respondents.³² Unlike some state ERPO laws, and in order to make its ERPO law even more useful, New York provides that different categories of key individuals, such as family members and school administrators, can petition the court for an ERPO (as opposed to limiting petitioners to law enforcement officers). Further, New York amended the New York ERPO Law in 2022 to expand the scope of eligible petitioners to include mental health professionals who have examined the respondent within the last six months.³³ New York created and expanded this broad list of eligible petitioners precisely because they are the people most likely to notice when a variety of predictors of future violence may be present, and they are best equipped to make well-informed and personalized assessments of an individual's behavior over time.³⁴

³²*Delivery of S. 2451/Assemb. 2689 Before Assemb.*, 2019-2020 Reg. Sess. (N.Y. 2019), <https://www2.assembly.state.ny.us/write/upload/transcripts/2019/1-29-19.pdf> (statement of Jo Anne Simon, Assemb.) (“[T]his is a list, a non-exhaustive list of factors that the court may consider. [...] “the reality is that there's a context here.”)

³³ Extreme Risk Protection Laws: New York, John Hopkins Bloomberg School of Public Health (Dec. 12, 2022), <https://americanhealth.jhu.edu/erpo-state/new-york>.

³⁴ Press Release, Carl E. Heastie, Assemb. Speaker, Assembly Passes Package of Legislation to Strengthen State's Gun Laws and Protect New York Communities (Jun. 2, 2022), <https://nyassembly.gov/Press/?sec=story&story=102242> (“By strengthening the Red Flag Law and extending the ability to file Extreme Risk Protection Orders, we will help ensure that those who present an immediate danger to themselves and our communities, do not remain in the shadows and can begin to receive the attention and treatment they need”); *see also Delivery of S. 2451/Assemb. 2689 Before Assemb.*, 2019-2020 Reg. Sess. (N.Y. 2019), <https://www2.assembly.state.ny.us/write/upload/transcripts/2019/1-29-19.pdf> (statement of Edward Braunstein, Assemb.) (“[O]ften we see the evidence that the shooter had exhibited characteristics of someone who is likely to cause harm to themselves or others. And we ask ourselves, why didn't someone do something? Why didn't someone intervene? And now we have an opportunity to petition a court, whether it's a family member, whether it's law enforcement, whether it's a school official . . .”).

C. Courts Should Issue an ERPO Where a Respondent Meets Factors that Are Predictors of Violence

It is particularly important that courts seriously consider a respondent's prior acts of violence and exposure to extreme violence when reviewing an ERPO petition. Empirical evidence suggests that prior acts of violence, including violence in the workplace and law enforcement's use of excessive force, are strong predictors of future violence. Additionally, studies show that exposure to a culture of excessive law enforcement violence may also be predictive of an individual engaging in future violence. Each of these factors is present in this case.

1. Prior Acts of Violence

The New York ERPO Law instructs courts to consider whether a respondent has engaged in or threatened prior acts of violence.³⁵ Indeed, an abundance of research demonstrates that prior acts of violence are strong predictors of future acts of violence. For example, one 2020 study using data collected from 63,000 individuals involved in 375,000 police-recorded events across a three-year period found that “previous violence is the strongest predictor of future violence across all model specifications, with an increase in odds never smaller than 123%.”³⁶ A 2013 study in Sweden likewise found that only 1% of the total population accounted for

³⁵ N.Y. C.P.L.R. 63-A § 6342(2).

³⁶ Paolo Campana & Andrea Giovannetti, *Predicting Violence in Merseyside: A Network-Based Approach Using No Demographic Information*, CAMBRIDGE J. EVIDENCE-BASED POLICING 89, 99 (2020).

63.2% of all convictions for violent crimes, and concluded that “[t]he majority of violent crimes are perpetrated by a small number of persistent violent offenders.”³⁷ Another study from 2023 found that firearm purchasers with criminal histories of prior violence were seven times more likely to commit future violence compared to those with no prior criminal history.³⁸ And yet another 2024 study extracted police-recorded crime data for 20,000 suspects over a 12-year period and found that “past offending behavior[s]” may “strongly predict the likelihood of future offending,” and that this likelihood is “further amplified” for “more severe violent offenses.”³⁹

It is because of this clear link between past violence and future violence that New York legislators sensibly included previous acts or threats of violence as the first factor a court should consider when reviewing an ERPO petition.

Of particular interest in this case, studies have also found that the predictive value of previous acts or threats of violence extends to violence committed in the workplace. For example, one study found that “perpetrators with prior criminal history were significantly more likely to engage in assaultive behavior within workplaces,” thereby suggesting that an individual’s “history of prior violence” is

³⁷ Orjan Falk et al., *The 1% of the Population Accountable for 63% of All Violent Crime Convictions*, 49 SOC. PSYCHIATRY & PSYCHIATRIC EPIDEMIOLOGY 559, 569 (2014).

³⁸ Aaron Shev et al., *Importance of Categories of Crime for Predicting Future Violent Crime Among Handgun Purchasers in California*, 10 INJ. EPIDEMIOLOGY 1, 2 (2023).

³⁹ Joke Geeraert et al., *Violence by Association or Participation? Examining the Differential Impact of Violent Co-Offenders on Future Offending Behavior*, CRIMRXIV 1, 10 (2024), [https://assets.pubpub.org/m112tkmb/Preprint%20\(in\)direct%20exposure%20to%20violence-11732540516943-01732542016128.pdf](https://assets.pubpub.org/m112tkmb/Preprint%20(in)direct%20exposure%20to%20violence-11732540516943-01732542016128.pdf).

“a risk factor for subsequent violence within the work site.”⁴⁰ In a study of workplace violence incidents conducted in Nebraska, 48% of the perpetrators had prior contact with the police. Consequently, the study concluded that “[s]uch prior police contact was strongly associated with the presence of assaultive behavior.”⁴¹ A 300-respondent survey published in 2022 likewise found a “significant positive correlation” between individuals who initiate domestic violence and those who initiate workplace violence.⁴² Specifically, the results showed that individuals who commit acts of domestic violence are more likely to commit acts of workplace violence, and vice versa.⁴³

As is also relevant here, research additionally shows that a law enforcement officer’s history of excessive use of force may be predictive of future unwarranted or illegal violence. Law enforcement officers are regularly subject to extreme or violent encounters in the line of duty. As such, a law enforcement officer’s use of force in the course of his or her work duties cannot fairly *always* be a predictor of future violence. However, where a law enforcement officer has a history of excessive

⁴⁰ Mario J. Scalora et al., *Nonfatal Workplace Violence Risk Factors: Data From a Police Contact Sample*, 18 J. INTERPERSONAL VIOLENCE 310, 318, 311–12 (2003); see also Liane Greenberg & Julian Barling, *Predicting Employee Aggression Against Coworkers, Subordinates and Supervisors: The Roles of Person Behaviors and Perceived Workplace Factors*, 20 J. ORGANIZATIONAL BEHAV. 897 (1999) (confirming that a significant indicator of future aggressive behavior is a history of aggressive behavior).

⁴¹ Scalora et al., *supra* note 40, at 311–12.

⁴² Jared W. Snow, *Exploring the Relationship Between Domestic Violence and Workplace Violence* 61 (Oct. 2022) (Ph.D dissertation, George Fox University).

⁴³ *Id.*

use of force, studies show that this pattern of behavior can be a predictor of future unjustified or illegal violence. For instance, one report analyzing numerous studies of law enforcement violence found that these studies consistently show that “[t]he best predictors of career-ending police misconduct” include “disciplinary and reliability problems at previous jobs [and] prior criminal involvement.”⁴⁴ Another study of police shootings found that officers who were the subjects of prior complaints and who had engaged in “two or more prior shootings” were three times more likely to engage in future gun violence.⁴⁵ Another statistical study of almost 600 police officers found that over two-thirds of those who had behaved violently toward civilians had also behaved violently toward their spouse or partner.⁴⁶

Courts have relied on similar evidence in granting ERPO petitions. In fact, ERPOs have been issued against police officers based on their involvement in excessive force incidents, including where that force did not involve use of a firearm. For example, one officer in Indiana had his firearms removed after a viral video showing him aggressively pulling a woman out of her car during a traffic stop led to

⁴⁴ PHILIP MATTHEW STINSON ET AL., POLICE INTEGRITY LOST: A STUDY OF LAW ENFORCEMENT OFFICERS ARRESTED 44 (2016), <https://www.ojp.gov/pdffiles1/nij/grants/249850.pdf>.

⁴⁵ Greg Ridgeway, *The Role of Individual Officer Characteristics in Police Shootings*, 687 ANNALS AM. ACAD. POL. SOC. SCI. 58, 64 (2020).

⁴⁶ Leonor Boulton Johnson, *Burnout and Work and Family Violence Among Police: Gender Comparisons*, in DOMESTIC VIOLENCE BY POLICE OFFICERS: A COMPILATION OF PAPERS SUBMITTED TO THE DOMESTIC VIOLENCE BY POLICE OFFICERS CONFERENCE AT THE FBI ACADEMY, QUANTICO, VA (Donald C. Sheelan ed., 2000).

his dismissal “due to public safety.”⁴⁷ Four Detroit police officers similarly had their firearms removed under Michigan’s ERPO law by the Detroit Police Department. Three of these officers had prior domestic violence allegations, and one had made threatening statements.⁴⁸ Courts across the United States have thus recognized the importance of mitigating risks of gun violence displayed by officers whose prior violent domestic and workplace behaviors reasonably led to concerns for public safety.

The empirical evidence leaves little doubt that prior acts of violence are one of the best available predictors of future violence. And it is no coincidence, then, that the New York legislature listed this factor first among those that a court should consider when reviewing an ERPO petition. Courts should strongly weigh this evidence, and the circumstances of previous violent episodes, when determining whether to issue an ERPO.

2. Exposure to violence

To fulfill its purpose to allow petitioners and courts to act in the face of warning signs of future violence, the New York ERPO Law contemplates factors beyond those that relate to a straightforward history of violence. For example, the

⁴⁷ Sierra Tufts, *State works to remove guns from former South Whitley police officer involved in viral traffic stop*, WANE 15 (Aug. 2, 2024, 4:07 PM), <https://www.wane.com/top-stories/state-works-to-remove-guns-from-former-south-whitley-police-officer-involved-in-viral-traffic-stop/>.

⁴⁸ Jack Springgate, *Four Detroit police officers’ firearms confiscated under Michigan’s red flag law, report says*, CBS DETROIT (Feb. 28, 2025, 6:37 PM), <https://www.cbsnews.com/detroit/news/michigan-red-flag-law-detroit-police/>.

law specifically lists abuse of controlled substances and alcohol as a factor that courts shall consider when determining whether to issue an ERPO.⁴⁹ Though this factor considers behavior not inherently violent, the New York legislature understood that substance abuse can be a warning sign of future violence, and required courts to consider whether it is present during an ERPO hearing.⁵⁰ Courts are therefore permitted to consider even non-violent predictors of future violence that are not identified in the statute.

One such predictor of violence is exposure to violence, whether in the context of civilian or police interactions. For example, studies have found that an individual is more likely to be aggressive toward their partner in adulthood if they witnessed or experienced physical aggression within their family during childhood.⁵¹ Research also shows that exposure to “assaultive” police conduct, including physical violence committed with or without a weapon, is associated with “greater odds of . . . suicidal ideation, suicide attempts, and psychotic experiences,” thus indicating a heightened

⁴⁹ N.Y. C.P.L.R. 63-A § 6342(2)(f).

⁵⁰ *Delivery of S. 2451/Assemb. 2689 Before Assemb.*, 2019–2020 Reg. Sess. (N.Y. 2019), <https://www2.assembly.state.ny.us/write/upload/transcripts/2019/1-29-19.pdf> (statement of Jo Anne Simon, Assemb.) (“[A]lcohol is perfectly legal and many people abuse it and that is [*sic*] warning sign that might be taken into consideration by the court in making a decision whether the remove a weapon from the household”).

⁵¹ *See, e.g.,* Ming Cui et al., *Intergenerational Transmission of Relationship Aggression: A Prospective Longitudinal Study*, 24 J. FAMILY PSYCH. 688, 695 (2010) (“[B]oth witnessing and experiencing parental aggression in the family of origin are associated with later aggressive behaviors in intimate unions.”); Diana Doumas et al., *The intergenerational transmission of aggression across three generations*, 9 J. FAMILY VIOLENCE 157, 170 (1994) (finding that consistent with prior studies, “witnessing marital aggression in the family-of-origin predicts to being the perpetrator of marital aggression in the second generation for males”).

risk of self-harm.⁵² Moreover, severe forms of assaultive police conduct, including physical violence with a weapon, have the largest effects on these mental health outcomes.⁵³

Critically, police officers who are exposed to their own colleagues' excessive use of force against others are more likely to engage in excessive use of force in the future themselves.⁵⁴ One study found that officers' exposure to colleagues with a history of use of force complaints, *i.e.*, a complaint involving "excessive force . . . , unnecessary physical contact, or an act that resulted in injury/death," is "positively and significantly associated" with involvement in a future use of force complaint.⁵⁵ On the other hand, officers who are exposed to fewer colleagues with prior use of force complaints against them are less likely to be the subject of a use of force complaint in the future.⁵⁶ These studies underscore that a court should consider a

⁵² Jordan E. DeVyllder et al., *Association of Exposure to Police Violence with Prevalence of Mental Health Symptoms Among Urban Residents in the United States*, JAMA NETWORK OPEN 1, 7–8 (Nov. 21, 2018); *see also* Jordan E. DeVyllder et al., *Elevated Prevalence of Suicide Attempts Among Victims of Police Violence in the USA*, 94 J. URB. HEALTH (May 22, 2017), <https://link.springer.com/article/10.1007/s11524-017-0160-3> (finding that experience of physical police violence greatly increased the odds of suicide attempts).

⁵³ *Id.*

⁵⁴ Daria Roithmayr, *The Dynamics of Excessive Force*, 2016 U. CHI. LEGAL F. 407, 430 (2016) ("Research on observational learning suggests that officers who witness other officers use excessive force are more likely to use excessive force in the future in similar settings.").

⁵⁵ Marie Ouellet et al., *Network Exposure and Excessive Use of Force: Investigating the Social Transmission of Police Misconduct*, 18 CRIMINOLOGY & PUB. POL'Y 675, 681–82, 689 (2019) ("Compared with an officer in a network with no officers previously involved in [a] use of force [complaint], an officer with an average proportion (39%) of officers with a history of use of force [complaints] in his or her immediate network is 26% more likely to be involved in a future use of force complaint.").

⁵⁶ *Id.* at 693 (2019) ("Officers' misconduct networks influence their own involvement in use of force complaints . . .").

respondent's exposure to violence, and in particular excessive police violence, when determining whether grounds for a temporary extreme protection order exist.

3. Respondent meets these critical factors

It bears highlighting that the respondent in this case meets the foregoing factors. Respondent was allegedly a party to the brutal beating of Robert Brooks at the Marcy Correctional Facility in December 2024. This fatal beating of an unarmed inmate resulted in a senseless, violent, and avoidable death. Because of Respondent's alleged participation in this episode, he is charged with second degree murder and first degree manslaughter. Clearly, Respondent meets the history of violence factor, and specifically, a history of excessive law enforcement violence, as well as violence in the workplace. The court should weigh heavily this history of violence, as well as the intensity and context of that violence, when considering whether to grant an ERPO.

In addition to acts of violence, a history of exposure to violence is also relevant in this case. Even before Mr. Brooks's tragic death, Marcy Correctional Facility had become notorious for an alleged pattern of officer-conducted violence and abuse.⁵⁷ In 2022, the Correctional Association of New York conducted an on-

⁵⁷ Indeed, numerous officers involved in Brooks' death had already been implicated in prior abuse allegations, including one that left the victim with facial deformities and wounds that required surgery. *See* Conor Wight, *Marcy corrections officers involved in pattern of abuse and violence, lawsuits show*, CNY CENTRAL (Dec. 30, 2024, 10:50 PM), <https://cnycentral.com/news/i-team/marcy-correctional-officers-involved-in-pattern-of-abuse-and-violence-lawsuits-show>.

site investigation after receiving over 25 letters from incarcerated individuals alleging abuse at the facility.⁵⁸ In its report, the association found a “pervasive culture of fear and retaliation” at the facility, with reports of “rampant abuse by staff, including physical assaults.”⁵⁹ This is consistent with Governor Hochul’s remarks upon viewing the video that depicted Brooks’s death, in which she noted that “it seemed like they were very comfortable . . . that they had done that before.”⁶⁰ The Court should carefully consider this history of exposure to a culture of excessive violence in reviewing the ERPO petition.

CONCLUSION

For the foregoing reasons, *Amici* submit that there is ample evidence to show that the statutory and extra-statutory factors contemplated in the NY ERPO Law are predictors of future violence that are relevant to the case at issue. *Amici* therefore provided the foregoing analysis to assist the Court in its application of the New York ERPO Law to this case.


⁵⁸ Casey Pritchard, *Marcy Correctional report details abuse allegations going back to 2022*, UTICA OBSERVER DISPATCH (Feb. 3, 2025, 5:03 AM), <https://www.uticaod.com/story/news/local/2025/02/03/marcy-correctional-report-details-abuse-allegations-going-back-to-2022-robert-brooks/78003024007/>.

⁵⁹ *Id.*

⁶⁰ Andrew Donovan, *'There's something going on:' Violent prison culture allowed inmate deaths, governor says*, LOCAL SYR (Apr. 21, 2025, 6:40 PM), <https://www.localsyr.com/marcy-correctional-facility-inmates-death/theres-something-going-on-violent-prison-culture-allowed-inmate-deaths-governor-says/>.

Dated: June 5, 2025

Respectfully submitted,

/s/ 

Jennifer B. Loeb

Counsel of Record

FRESHFIELDS US LLP

700 13th Street NW, 10th Floor

Washington, DC 20005

(202) 777-4500

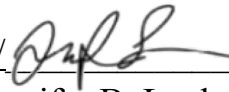
jennifer.loeb@freshfields.com

Counsel for *Amici Curiae*

PRINTING SPECIFICATIONS STATEMENT

Pursuant to 22 N.Y.C.R.R. § 1250.8(j), I hereby certify that the foregoing brief was prepared on a word processor, using 14-point Times New Roman proportionally spaced typeface, double-spaced, with 12-point single-spaced footnotes. The total number of words in this brief, inclusive of point headings and footnotes and exclusive of signature blocks and pages including the table of contents, table of citations, proof of service, and this Statement is 5,625.

Dated: June 5, 2025
Washington, D.C.

/s/ 
Jennifer B. Loeb