

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: September 24, 2026

CV-26-1297

In the Matter of NEW YORK
STATE POLICE,

Appellant,

v

MEMORANDUM AND ORDER

OWEN WW.,

Respondent.

Calendar Date: September 17, 2026

Before: Clark, J.P., Ceresia, McShan, Powers and Ryba, JJ.

*Letitia James, Attorney General, Albany (Douglas E. Wagner of counsel), for
appellant.*

Ryba, J.

Appeal from an order of the Supreme Court (Matthew Sypniewski, J.), entered June 17, 2026 in Schenectady County, which dismissed petitioner's application, in a proceeding pursuant to CPLR article 63-A, for an extreme risk protection order against respondent.

Petitioner commenced this proceeding pursuant to CPLR article 63-A seeking an extreme risk protection order (hereinafter ERPO) against respondent, an 18-year-old high school student, based upon allegations that he was likely to engage in conduct resulting in serious harm to himself or others. In support of the application, petitioner submitted a State Police investigative report and the sworn statement of respondent's father which reflected that respondent had not slept for several days, exhibited paranoid behavior and repeatedly threatened to kill his parents in their sleep, with the father reporting at least 18

such threats on the day police were contacted. The submissions also indicated that respondent destroyed cameras and other electronics in the home, attempted to punch through windows and had reportedly made threats to other students at school. Respondent was ultimately taken into custody pursuant to Mental Hygiene Law § 9.41 and transported to the hospital for evaluation. Respondent's father further disclosed that he owned firearms, but stated that they were secured at a distant location and that respondent did not know their location or have access to them.

Supreme Court denied petitioner's application for a temporary ERPO based primarily upon the absence of proof that respondent threatened to use, possessed or had access to a firearm. At the subsequent hearing on petitioner's application for a final ERPO, Supreme Court heard limited oral argument wherein petitioner indicated it intended to proceed by introducing supplemental testimony from respondent's father and certified footage from the responding trooper's body-worn camera. Supreme Court inquired whether petitioner's proof included evidence that respondent had access to a firearm or threatened to use one. Petitioner acknowledged that it did not, but maintained that such proof was not statutorily required and an ERPO was appropriate because petitioner was of legal age to buy a firearm. The court thereafter declined to receive petitioner's proffered evidence and denied the application for a final ERPO based on the absence of any firearm-related conduct. Petitioner appeals.

We reverse. CPLR article 63-A establishes a procedure by which a court may temporarily restrict a person's access to firearms where that person has been judicially determined to pose a risk of serious harm to himself or others (*see* CPLR 6340 [1]; 6342, 6343). The purpose of the statutory scheme is "to prevent individuals from accessing firearms, rifles, and shotguns who have been deemed, through judicial process, likely to engage in conduct that would result in serious harm to themselves or others" (*Matter of R.M. v C.M.*, 226 AD3d 153, 158 [2d Dept 2024] [internal quotation marks, brackets and citation omitted]). Upon application, the court may first issue a temporary ERPO upon a finding of probable cause to believe that "the respondent is likely to engage in conduct that would result in serious harm to himself, herself or others" (CPLR 6342 [1]). Where, as here, a temporary ERPO is denied, the court must nevertheless conduct a hearing on the application for a final ERPO (*see* CPLR 6342 [5]). At that hearing, the petitioner bears the burden to establish, by clear and convincing evidence, "that the

respondent is likely to engage in conduct that would result in serious harm to himself, herself or others," as defined in Mental Hygiene Law § 9.39 (a) (CPLR 6343 [2]).¹

In making that determination, the court must consider the eight factors enumerated in CPLR 6342 (2), together with any other relevant circumstances (*see* CPLR 6343 [2]; *Matter of New York State Police v Galliher*, 248 AD3d 1680, 1682 [4th Dept 2026]). The statutory factors include, among other things, acts of the respondent involving "a threat or act of violence or use of physical force directed toward self, the petitioner, or another person" (CPLR 6342 [2] [a]). Significantly, only three of the eight enumerated factors expressly concern a weapon or firearm (*see* CPLR 6342 [2] [c], [d], [g]). Thus, nothing in the statutory framework requires proof that the threatened or anticipated physical harm will be accomplished *with a firearm*, nor does it make a respondent's existing possession of or access to a firearm a prerequisite to issuance of an ERPO. Indeed, the Legislature's express reference to firearms in certain statutory factors, while omitting any such limitation from the governing likelihood-of-serious-harm standard and the general threat-of-violence factor, demonstrates that no such additional requirement may properly be engrafted onto the statute (*see Matter of Gonzalez v Northeast Parent & Child Socy.*, ___ NY3d ___, ___, 2026 NY Slip Op 01443, *2 [2026]; *Commonwealth of the N. Mariana Is. v Canadian Imperial Bank of Commerce*, 21 NY3d 55, 60 [2013]; *Pajak v Pajak*, 56 NY2d 394, 397 [1982]).

The record reflects that Supreme Court nevertheless imposed such a requirement. When petitioner argued that firearm-related conduct was not statutorily required, the court acknowledged the statutory language but nevertheless indicated that, given the purpose of an ERPO, the allegations against respondent should somehow relate to a firearm. The court further expressed concern regarding the collateral consequences and stigma associated with an ERPO where the allegations are not firearm related. Those considerations, however understandable, do not alter the standard selected by the Legislature.

¹ As relevant here, Mental Hygiene Law § 9.39 (a) defines a likelihood of serious harm as "substantial risk of physical harm to themselves as manifested by threats of or attempts at suicide or serious bodily harm or other conduct demonstrating that they are dangerous to themselves" (Mental Hygiene Law § 9.39 [a] [1]), or "substantial risk of physical harm to other persons as manifested by homicidal or other violent behavior by which others are placed in reasonable fear of serious physical harm" (Mental Hygiene Law § 9.39 [a] [2]).

Supreme Court's application of an erroneous standard effectively foreclosed petitioner from presenting its proof under the proper statutory inquiry. By terminating the proceeding without permitting petitioner to question its witness or introduce the proffered evidence, the court failed to conduct the statutorily required hearing which contemplates consideration of the petition, the evidence submitted by the parties and the relevant law-enforcement report (*see* CPLR 6343 [1], [2]). As a result, the record is insufficient to determine whether petitioner can satisfy its burden to establish, by clear and convincing evidence, that respondent is likely to engage in conduct resulting in serious harm to himself or others. Accordingly, the matter must be remitted for a new hearing at which the parties may fully present their relevant proof and Supreme Court may determine the application under the proper statutory standard, without requiring proof that respondent threatened harm with a firearm or presently possesses or has access to one. Such hearing shall take place within 14 days from the date of this decision.

Clark, J.P., Ceresia, McShan and Powers, JJ., concur.

ORDERED that the order is reversed, on the law, without costs, and matter remitted to the Supreme Court for a hearing on petitioner's application for a final extreme risk protection order within 14 days of the date of this decision.

ENTER:

A handwritten signature in black ink, reading "Robert D. Mayberger". The signature is written in a cursive, flowing style with a large, stylized 'R' and 'M'.

Robert D. Mayberger
Clerk of the Court