SUMMARY
June 18, 2025

2025COA58

No. 24CA1009, *People in the Interest of R.Z.* — Constitutional Law — Colorado Constitution — Due Process — Second Amendment — Right to Bear Arms; Health and Welfare — Care and Treatment of Persons with Mental Health Disorders — Certification for Short-term Treatments; National Instant Criminal Background Check System

This case raises novel issues regarding the intersection of four important policies: the constitutional right to bear arms, the government's interest in the involuntary treatment of persons whose mental health conditions pose an imminent threat to themselves or others, the federal and state statutes restricting the ability of persons who were involuntarily certified for short-term treatment of a mental health disorder to possess or receive firearms, and a person's due process right to challenge the loss of a fundamental right at the government's hands. The division concludes that section 27-65-109, C.R.S. 2024, which specifies the

procedure for certification for short-term treatment, does not bar a court from entering a certification order before conducting a section 27-65-109(6) hearing at which the respondent can challenge the certification. In addition, the division holds that a person who was involuntarily certified for short-term treatment of a mental health disorder does not have the right to a hearing before the person's name is added to the national instant criminal background check system (the NICS), pursuant to section 13-9-123(1)(c), C.R.S. 2024. Further, the division decides that section 13-9-124(5)(a), C.R.S. 2024, which sets forth the procedure for removing a person's name from the NICS, does not violate the constitutional rights of a person with a mental health disorder by placing the burden on such person to prove their name should be removed from the NICS.

COLORADO COURT OF APPEALS **2025COA58**

Court of Appeals No. 24CA1009
City and County of Denver Probate Court No. 24MH464
Honorable Elizabeth D. Leith, Judge

The People of the State of Colorado,

Petitioner-Appellee,

In the Interest of R.Z.,

Respondent-Appellant.

ORDERS AFFIRMED

Division VII
Opinion by JUDGE LIPINSKY
Johnson and Moultrie, JJ., concur

Announced June 18, 2025

Katie McLoughlin, Acting City Attorney, Kathleen Bell, Assistant City Attorney, Denver, Colorado, for Petitioner-Appellee

The Mental Health Law Firm, Jonathan B. Culwell, Denver, Colorado, for Respondent-Appellant

¶ 1 The due process clause of the Colorado Constitution entitles individuals faced with the loss of a fundamental right at the government's hands to challenge that loss. *See* Colo. Const. art. II, § 25; *People in Interest of C.N.*, 2018 COA 165, ¶ 21, 431 P.3d 1219, 1223-24. Such individuals are entitled to notice of the government's action and a hearing. *See Patterson v. Cronin*, 650 P.2d 531, 535 (Colo. 1982).

¶ 2 However, the government may take limited initial actions affecting individuals' fundamental rights if, for example, the individuals pose an imminent threat to themselves or others or are gravely disabled due to a mental health disorder. In those circumstances, individuals are entitled to a prompt hearing, but not until after the government has temporarily infringed upon their fundamental rights.

¶ 3 One example of such an infringement is a court order for certification of a person for involuntary short-term treatment of a mental health disorder under section 27-65-109, C.R.S. 2024. But that certification has consequences beyond subjecting the person to involuntary mental health treatment. The "state court administrator," as defined in section 13-3-101, C.R.S. 2024, is

required to send "[t]he name of each person with respect to whom the court has entered an order for involuntary certification for short-term treatment of a mental health disorder" to the Colorado Bureau of Investigation, which then reports the name to the national instant criminal background check system (the NICS). § 13-9-123(1)(c), C.R.S. 2024. The NICS plays a crucial role in enforcing the federal statute barring a person "who has been committed to a mental institution" from possessing or receiving firearms or ammunition. *See* 18 U.S.C. § 922(g)(4).

¶ 4 In this case, a court entered an order certifying R.Z. for involuntary short-term treatment due to a mental health disorder, and his name was added to the NICS. At R.Z.'s request, the court set a hearing to review his certification. But the court vacated that hearing after a physician notified the court that R.Z. no longer met the statutory criteria for short-term treatment.

¶ 5 R.Z. contends that the certification order unconstitutionally infringed on his right to bear arms because the court never proceeded with a hearing at which he could challenge the certification order and the inclusion of his name in the NICS. He appeals that order, as well as the court's subsequent order denying

his request to vacate the certification order and remove his name from the NICS. We reject his arguments and, therefore, affirm the orders.

I. Background

¶ 6 A friend of R.Z. requested a welfare check due to concerns that R.Z. was spending "all [of] his time in bed and was only eating" when his friend fed him. Following the welfare check, R.Z. was admitted to Centennial Peaks Hospital (the hospital) for a seventy-two-hour evaluation and care under section 27-65-106(1), C.R.S. 2024.

¶ 7 On April 24, 2024, Michael Chamberlain, M.D., a staff physician at the hospital, filed a "notice of certification and certification for short term treatment" (the Chamberlain certification) in the Denver probate court for R.Z.'s short-term treatment under section 27-65-109. § 27-65-109(1), (2). Dr. Chamberlain reported that R.Z. was not meeting his "basic needs at home" and that "his presentation has been consistent with profound catatonia." He also said that R.Z. had a "mental health disorder," was "gravely disabled," and had not "accepted[] voluntary treatment."

¶ 8 The next day, the probate court entered an order (the April order) "enter[ing] and confirm[ing]" the Chamberlain certification as a court order "absent further action taken by" R.Z. The court advised R.Z. that the April order did "not affect [R.Z.]'s right to review the certification *ab initio*."

¶ 9 Pursuant to section 13-9-123(1)(c), R.Z.'s name was added to the NICS because he was the subject of "an order for involuntary certification for short-term treatment of a mental health disorder" entered under section 27-65-109. The record does not indicate when R.Z.'s name was added to the NICS or whether it was added based on the Chamberlain certification, the April order, or both.

¶ 10 On May 3, the Denver City Attorney (the City) filed a motion for authorization to administer electroconvulsive therapy (ECT) to R.Z. involuntarily. In support of the motion, the City submitted a letter from Dr. Chamberlain stating that R.Z. had "severe catatonia and . . . [was] not able to meet his basic needs without significant oversight and support from professional staff in a locked, inpatient psychiatric ward." Dr. Chamberlain reported that, "[d]espite pharmacotherapy," R.Z.'s catatonia had "improved only marginally," and he recommended ECT as "the most appropriate medical

intervention . . . considering the severity of [R.Z.'s] symptoms." The City requested a hearing on its motion.

¶ 11 The court appointed counsel for R.Z. On May 8, R.Z.'s counsel requested a hearing on short-term certification. The court scheduled a hearing on the outstanding issues for May 15.

¶ 12 The hearing never took place, however. On May 14, Dr. Roderick O'Brien, M.D., another physician at the hospital, filed a notice of termination of involuntary treatment (the notice of termination). In the notice of termination, Dr. O'Brien informed the court that R.Z. no longer met the statutory criteria for certification, thereby terminating the certification. *See* §§ 27-65-109(9), 27-65-112(1), C.R.S. 2024. In response to the notice of termination, the court vacated the May 15 hearing and closed and sealed the case, as section 27-65-109(7) required.

¶ 13 On May 28, R.Z.'s counsel filed an "Emergency Motion to Vacate Order of April 25, 2024[,] and Cancel the Record Sent to the State Court Administrator's Office" (the emergency motion) under C.R.C.P. 59(e)(1). In the emergency motion, R.Z.'s counsel argued that, because the court had not conducted a section 27-65-109(6)

hearing, it lacked the authority to enter an order certifying R.Z. for short-term treatment.

¶ 14 R.Z.'s counsel requested that the court vacate the April order and "remove [R.Z.'s] name from a report compiled and submitted for inclusion on the [NICS]" because the court had never "entered an order for short-term certification pursuant to article 65 of title 27." R.Z.'s counsel further argued that the court should remove R.Z.'s name from the NICS because it had been added "without due process" and "through deviating significantly from the plain language" of section 13-9-123(1)(c). Furthermore, R.Z.'s counsel asserted that retaining R.Z.'s name in the NICS would raise "the specter of his mental stability without due process," which "could have disastrous consequences for [R.Z.'s] immigration status and application" for legal alien status. (R.Z. is a Chinese citizen working in the United States pursuant to an H-1B visa.)

¶ 15 In its opposition to the emergency motion, the City argued that the court "did not err in ordering [R.Z.] to the NICS" and should not vacate the April order. The City specifically argued, among other points:

- The court was "without subject matter jurisdiction to consider" R.Z.'s arguments in the emergency motion because "[t]he case was rendered moot when [the hospital] terminated the short-term certification before a hearing could be held."
- No "case law or statutory authority" required the court to "make a finding by clear and convincing evidence that [R.Z.] ha[d] a mental health disorder and as a result [was] a danger to self, danger to others, or gravely disabled" before it could enter the April order.
- Under section 13-9-124, C.R.S. 2024, R.Z. had the right to "a judicial process whereby a person may apply or petition for relief from federal firearms prohibitions."

¶ 16 On June 14, the court entered an order (the June order) denying the emergency motion. It found that R.Z.'s "name was properly reported to [the] NICS regardless of whether [R.Z.] requested a hearing or whether a hearing was held." The court further found that the notice of termination "terminated the short-term certification and vacated the hearing" but that, contrary to R.Z.'s argument, the filing of the notice of termination did not

support a finding that R.Z.'s name should never have been reported to the NICS pursuant to section 13-9-123(1)(c) or a court order "to remove the record" from the NICS under section 13-9-123(4).

¶ 17 R.Z. makes the following assertions on appeal:

- The court erred by imposing, through the April order, a firearm regulation that it lacked the authority to enter under the state's police power.
- There was insufficient evidence to support entry of the April order and, specifically, the finding that R.Z.'s short-term certification was necessary, particularly as the court had not found by clear and convincing evidence that the City had established grounds for certification.
- Section 13-5-142.8, C.R.S. 2024, is unconstitutional because it allows a person's name to be added to the NICS based solely on a "notice filed by a professional person" without a hearing.
- The court erred by failing to give R.Z. notice that the entry of the Chamberlain certification restricted his right to bear arms.

- R.Z. had a due process right to a hearing after the filing of the notice of termination.
- The court erroneously placed the burden on R.Z. to prove that he did not have a mental health disorder, in violation of his constitutional right to bear arms.

II. Analysis

A. The April Order Became Appealable Upon the Entry of the June Order

¶ 18 Before we reach R.Z.'s contentions, we consider the City's argument that we cannot review the April order because it is "not a final order." We disagree.

¶ 19 This court generally can only exercise jurisdiction over appeals from final judgments. *See Ditirro v. Sando*, 2022 COA 94, ¶ 24, 520 P.3d 1203, 1208; *see* § 13-4-102(1), C.R.S. 2024. "In deciding the finality of an order, we look to the legal effect of the order rather than to its form." *State ex rel. Suthers v. CB Servs. Corp.*, 252 P.3d 7, 10 (Colo. App. 2010). "[F]or purposes of appeal, an order is final and appealable when it 'finally disposes of the particular action and prevents further proceedings as effectually as would any formal

judgment.'" *Id.* (quoting *Levine v. Empire Sav. & Loan Ass'n*, 557 P.2d 386, 387 (Colo. 1976)).

¶ 20 The April order was not final and appealable when the court issued it because it did not finally dispose of the case and prevent further proceedings. *See id.* For example, in the April order, the court advised R.Z. that he had the right "to review the certification *ab initio*" and "request review of the certification as provided by the relevant statutes." This language highlights that the April order neither disposed of the case nor prevented further proceedings.

¶ 21 But the June order was a final, appealable order. *See Ditirro*, ¶ 28, 520 P.3d at 1208. It resolved the remaining issues in the case and addressed R.Z.'s requests that the court vacate the April order, alert "the State Court Administrator [to] remove [R.Z.'s] name from the record" under section 13-9-124(4), and "notify the attorney general" that the basis for adding R.Z.'s name to the NICS "does not apply or no longer applies."

¶ 22 The April order became appealable upon entry of the June order. "Once a court enters a final judgment, the court's earlier orders merge into the judgment and generally become reviewable." *Mulberry Frontage Metro. Dist. v. Sunstate Equip. Co.*, 2023 COA 66,

¶ 14, 537 P.3d 391, 395. Thus, upon the entry of the June order, we had jurisdiction to review the April order.

B. The Court Did Not Err by Entering the April Order

¶ 23 We next consider R.Z.'s first two arguments, which both focus on the validity of the April order — the court lacked the authority under the state's police power to cause his name to be added to the NICS and there was insufficient evidence to support the entry of the April order. We disagree.

1. Standard of Review

¶ 24 "We review de novo questions of law concerning the application and construction of statutes." *Freedom Colo. Info., Inc. v. El Paso Cnty. Sheriff's Dep't*, 196 P.3d 892, 897 (Colo. 2008).

2. Law

¶ 25 Section 13-9-123(1)(c) requires that the name of a person who is the subject of an order for involuntary certification for short-term treatment of a mental health disorder be added to the NICS:

> [T]he state court administrator shall send electronically the following information to the Colorado bureau of investigation [for NICS reporting] . . .
>
> . . . .

> The name of each person with respect to whom the court has entered an order for involuntary certification for short-term treatment of a mental health disorder pursuant to section . . . 27-65-109 . . . .

¶ 26 Section 27-65-109 specifies the procedures governing a person's involuntary certification for short-term treatment of a mental health disorder. Section 27-65-109(1)(a) provides that a court may certify a person "for not more than three months for short-term treatment" if, among other conditions, "[t]he professional staff of the facility detaining the person on an emergency mental health hold has evaluated the person and has found the person has a mental health disorder" and, as a result of the mental health disorder, the person "is a danger to the person's self or others or is gravely disabled."

¶ 27 The notice of certification must be "signed by a professional person who participated in the evaluation." § 27-65-109(2). It must also "[s]tate facts sufficient to establish reasonable grounds to believe that the respondent has a mental health disorder and, as a result of the mental health disorder, is a danger to the respondent's self or others or is gravely disabled." § 27-65-109(2)(a).

3. The Court Did Not Act Outside the Bounds of the State's Police Power by Entering the April Order

¶ 28 R.Z. asserts that including his name on the NICS without a hearing violated his right to "keep and bear arms in defense of his home, person and property" guaranteed under article II, section 13, of the Colorado Constitution. He further contends that section 13-5-142.8 is unconstitutional to the extent it permits a person's name to be added to the NICS based solely on a professional's notice of certification "prior to entry of an order for involuntary care."

¶ 29 As a threshold matter, we need not reach the question of whether section 13-5-142.8 impermissibly allows a person's name to be added to the NICS solely upon the entry of a professional's notice of certification because the court adopted the Chamberlain certification as a court order one day after Dr. Chamberlain filed it. Nothing in the statute precludes a court from confirming a respondent's certification for short-term treatment before a section 27-65-109(6) hearing, which is what occurred here when the court entered the April order. Although the record does not indicate when R.Z.'s name was added to the NICS, or whether it was added upon

the filing of the Chamberlain certification, the entry of the April order, or both, the April order alone was sufficient under section 13-5-142.8 to place R.Z.'s name on the NICS.

¶ 30 Accordingly, R.Z. has no grounds for challenging the constitutionality of section 13-5-142.8 to the extent it may permit a person's name to be added to the NICS solely upon a professional's filing of a notice of certification. (For the same reason, we need not address the parties' disagreement regarding whether the 2019 enactment of section 13-5-142.8, Ch. 311, sec. 3, § 13-5-142.8, 2019 Colo. Sess. Laws 2812, effectively overruled *Ray v. People*, 2019 COA 24, ¶ 14, 456 P.3d 54, 57-58, in which a division of this court held that a certification by a professional person is not the equivalent of a court order for purposes of section 13-9-123(1)(c).)

¶ 31 Next, we disagree with R.Z.'s other arguments regarding the April order for two reasons. First, we reject R.Z.'s implicit, if not explicit, argument that a court order cannot cause a person's name to be added to the NICS unless the court entered the order following a hearing under section 27-65-109(6).

¶ 32 The respondent in a mental health case is not entitled to a hearing before the professional files a notice of certification. And a

hearing is not mandatory unless the respondent requests one. A respondent may "file a written request that the certification for short-term treatment or the treatment be reviewed by the court or that the treatment be on an outpatient basis." § 27-65-109(6). "If review is requested, the court shall hear the matter within ten days after the request, and the court shall give notice to the respondent and the respondent's attorney and the certifying and treating professional person of the time and place of the hearing." *Id.* If the court holds a hearing, it "may enter or confirm the certification for short-term treatment, discharge the respondent, or enter any other appropriate order." *Id.*

¶ 33 In addition, R.Z. characterizes the April order as a firearm regulation beyond the scope of the state's police power to restrict an individual's constitutional right to bear arms. But the Colorado Supreme Court has "consistently concluded that the state may regulate the exercise of [the right to bear arms] under its inherent police power so long as the exercise of that power is reasonable." *Robertson v. City & Cnty. of Denver*, 874 P.2d 325, 328 (Colo. 1994); *see also Rocky Mountain Gun Owners v. Polis*, 2020 CO 66, ¶ 31, 467 P.3d 314, 323 (reaffirming "the reasonable exercise test

articulated in *Robertson* for reviewing challenges brought under article II, section 13"). "An act is within the state's police power if it is reasonably related to a legitimate governmental interest such as the public health, safety, or welfare." *Robertson*, 874 P.2d at 331.

¶ 34 R.Z.'s argument is at odds with the legitimate government interest that section 13-9-123(1)(c) advances — that "[t]he name of each person with respect to whom the court has entered an order for involuntary certification for short-term treatment of a mental health disorder pursuant to section . . . 27-65-109" be added to the NICS to restrict such person's ability to possess or receive firearms. That public policy also underlies the federal statute barring any person "who has been committed to a mental institution" from "possess[ing] [or] . . . receiv[ing] any firearm or ammunition which has been shipped or transported in interstate or foreign commerce." 18 U.S.C. § 922(g)(4).

¶ 35 R.Z. does not dispute that section 13-9-123(1)(c) furthers the government's interest in protecting the public health, safety, or welfare, including that of individuals subject to mental health certifications who a court determines are dangers to themselves or others. The court expressly acknowledged that interest in the April

order when it noted that the NICS reporting requirements set forth in section 13-9-123 maintain the "health and safety of individuals placed under a mental health certification."

¶ 36 In any event, because the court grounded the April order on Dr. Chamberlain's findings that R.Z. had a "mental health disorder," was "gravely disabled," and had not "accepted[] voluntary treatment," the April order was not, as R.Z. contends, a firearm regulation, much less one that exceeded the state's inherent police power.

¶ 37 Not only is it a stretch to characterize the April order as a firearm regulation, but R.Z.'s argument regarding the interplay between the April order and section 13-9-123 leads to a legally untenable conclusion: that he had an unqualified right to bear arms — despite Dr. Chamberlain's opinion that R.Z. had severe catatonia and was unable to meet his basic needs without significant oversight and support from professional staff in a locked, inpatient psychiatric ward — because the court never conducted a hearing under section 27-65-109(6). We are not aware of any legal authority supporting such an expansive reading of the

constitutional right to bear arms of someone with a mental health disorder, and R.Z. does not cite any.

¶ 38 Second, R.Z. gives short shrift to the statutory procedure for removing a person's name from the NICS. The statute "set[s] forth a judicial process whereby a person may apply or petition for relief from federal firearms prohibitions." § 13-9-124(1). Those eligible to petition for relief under section 13-9-124 include individuals whose names were added to the NICS upon the entry of "an order for the person's involuntary certification for short-term treatment of a mental health disorder pursuant to section . . . 27-65-109." § 13-9-124(2)(a)(III).

¶ 39 Section 13-9-124(3), entitled "Due process," specifies the procedure for challenging the inclusion of a name in the NICS:

> In a court proceeding pursuant to this section:
>
> (a) The petitioner shall have an opportunity to submit his . . . own evidence to the court concerning his . . . petition;
>
> (b) The court shall review the evidence; and
>
> (c) The court shall create and thereafter maintain a record of the proceeding.

¶ 40 Significantly, R.Z. never availed himself of this statutory procedure for challenging the inclusion of his name in the NICS —

he never filed "a court proceeding pursuant to" section 13-9-124(3) to seek removal of his name from the NICS. R.Z. could have obtained the relief he seeks by following the steps outlined in section 13-9-124. (Section 13-9-123(3) provides a separate process through which individuals can seek removal of their names from the NICS. As relevant here, under that statute, an individual may submit a written request to the State Court Administrator if "not less than three years before the date of the written request" the period of certification or commitment expired. *See* § 13-9-123(3). R.Z. was ineligible to seek relief under section 13-9-123 because three years had not elapsed since Dr. O'Brien filed the notice of termination.)

4. There Was Sufficient Evidence for Entry of the April Order

¶ 41 R.Z. further contends that the court lacked a sufficient evidentiary basis to enter the April order because the court did not expressly find that "clear and convincing evidence" supported Dr. Chamberlain's request that R.Z. be certified for short-term treatment. But as we understand his argument, R.Z. does not contend that the information in the Chamberlain certification failed to provide clear and convincing evidence that R.Z. satisfied the

criteria for short-term certification in section 27-65-109(1)(a); rather, he focuses on his inability to challenge his short-term certification at a section 27-65-109(6) hearing following Dr. O'Brien's submission of the notice of termination.

¶ 42 Accordingly, this argument is inextricably intertwined with R.Z.'s contention that a court cannot enter a certification order that would cause a person's name to be added to the NICS unless and until the court has first conducted a hearing under section 27-65-109(6). R.Z.'s argument cannot be squared with the language of section 27-65-109, which does not preclude the entry of a pre-hearing certification order.

¶ 43 In sum, we reject R.Z.'s attack on the April order and hold that the court was not required to conduct an evidentiary hearing before it was authorized to enter an order that caused R.Z.'s name to be added to the NICS.

C. We Need Not Reach the Merits of R.Z.'s Argument that Section 13-5-142.8 Is Unconstitutional

¶ 44 R.Z.'s challenge to the constitutionality of "the statute requiring courts to restrict firearm rights without a hearing" is somewhat difficult to decipher. The argument appears to focus on

section 13-5-142.8, given R.Z.'s express reference to the alleged unconstitutionality of that statute in his opening brief and his assertion in his reply brief that he is not challenging the constitutionality of section 13-9-123. Moreover, four days before filing his reply brief, counsel for R.Z. sent a letter to the Clerk of the Colorado Supreme Court stating that his "opening brief avers section 13-5-142.8[] is unconstitutional under section 13 of article 2 of the Colorado Constitution." (As noted below, that letter was untimely.) Thus, section 13-5-142.8 is the only statute that R.Z. contends is unconstitutional in this case.

¶ 45 R.Z.'s constitutional argument focuses on section 13-5-142.8's language that "an order for involuntary certification for short-term treatment of a mental health disorder pursuant to section . . . 27-65-109 must also include a notice filed by a professional person pursuant to section . . . 27-65-109." R.Z. interprets section 13-5-142.8 to mean that the Chamberlain certification was legally equivalent to a court order for involuntary certification for short-term treatment and, therefore, could cause his name to be added to the NICS even if the court did not also enter a certification order. Accordingly, we understand R.Z.'s argument to be that a document

not signed by a judge cannot deprive a person of the right to bear arms, consistent with article II, section 13, of the Colorado Constitution.

¶ 46 But as explained above, R.Z.'s name was not added to the NICS based solely on the Chamberlain certification; the court certified R.Z. for short-term treatment by entering the April order. Because R.Z.'s name was added to the NICS through a court order signed by a judge, the Chamberlain certification at most indirectly impacted R.Z.'s constitutional right to bear arms, if at all. Accordingly, R.Z. lacks a basis for challenging the constitutionality of section 13-5-142.8, and we need not reach the merits of his constitutional challenge to the statute.

¶ 47 In light of our disposition of this argument, we also need not consider the City's argument that R.Z. failed to preserve his argument premised on the Colorado Constitution and failed to comply with C.A.R. 44. (R.Z.'s counsel concedes that he did not comply with that rule because he did not "notify the clerk of the supreme court in writing immediately upon the filing of the proceeding or *as soon as the question is raised in the appellate court*." C.A.R. 44 (emphasis added).)

D. R.Z.'s Final Three Arguments Also Fail

¶ 48 Lastly, we consider R.Z.'s final three arguments — that the court erred by failing to provide R.Z. with notice that the entry of the Chamberlain certification restricted his right to bear arms, the court violated his right to due process by canceling the May 15 hearing upon the filing of the notice of termination, and the court erroneously placed the burden on R.Z. to prove that he did not have a mental health disorder.

1. The Court Was Not Required to Provide R.Z. with Notice Regarding the Effect of the Chamberlain Certification on His Right to Bear Arms

¶ 49 R.Z. contends that the court erred by failing to provide him with notice that the filing of the Chamberlain certification resulted in a restriction on his right to bear arms. He concludes this argument by asserting that "the statutory requirement to restrict firearm rights without notice found at [section] 13-5-142.8, is unconstitutional and cannot be given effect." But as explained above, R.Z. has no basis for challenging the constitutionality of section 13-5-142.8 because, even if the Chamberlain certification resulted in the inclusion of his name in the NICS, the entry of the April order independently caused his name to be added to the NICS

pursuant to section 13-9-123(1)(c). And as also explained above, section 27-65-109(6) does not require a court to defer the entry of a certification order until it has conducted a hearing.

2. R.Z. Was Not Entitled to a Hearing After Dr. O'Brien Filed the Notice of Termination

¶ 50 R.Z. contends that the court violated his due process rights because, after Dr. O'Brien filed the notice of termination, R.Z. never had an opportunity to challenge the April order at a section 27-65-109(6) hearing. We disagree.

¶ 51 As explained above, section 27-65-109(6) grants a respondent the right to a hearing on the person's certification for short-term treatment within ten days from the hearing request. The scope of the hearing is limited to the court's review of "the certification for short-term treatment or the treatment" and whether the treatment should be conducted "on an outpatient basis." § 27-65-109(6). "At the conclusion of the hearing, the court may enter or confirm the certification for short-term treatment, *discharge the respondent*, or enter any other appropriate order." *Id.* (emphasis added). Thus, when Dr. O'Brien filed the notice of termination, R.Z. obtained the relief he could have received at the May 15 hearing — a discharge

from certification from short-term treatment. *See id.* R.Z. argues that he could have obtained other relief — beyond the relief specified in section 27-65-109(6) — had the court conducted a hearing after Dr. O'Brien filed the notice of termination.

¶ 52 But the court had no authority to conduct a section 27-65-109(6) hearing following Dr. O'Brien's submission of the notice of termination. Section 27-65-109(6) does not provide for hearings after the designated facility has informed the court that a certification order is no longer needed. Nothing in the statute permits a respondent whose case has closed to challenge the entry of the certification order or the inclusion of his name in the NICS pursuant to section 13-9-123(1)(c), which R.Z. seeks to do. R.Z. does not point to any legal authority allowing a court to retroactively vacate an order certifying a person for short-term treatment. R.Z. cannot erase the historical fact that he was the subject of such an order and that the April order caused his name to be added to the NICS.

¶ 53 Under section 27-65-109(7), the court was required to close R.Z.'s case upon his release from certification. When the court

received the notice of termination, section 27-65-109(7) required the court clerk to

> immediately seal the record in the case and omit the name of the respondent from the index of cases in the court until and unless the respondent becomes subject to an order of certification for long-term care and treatment . . . or until and unless the court orders the records opened for good cause shown.

Accordingly, upon receipt of the notice of termination, the court had no authority to keep the case open and conduct a section 27-65-109(6) hearing. Pursuant to section 27-65-109(7), the court protected R.Z.'s privacy rights by sealing the record and omitting his name from the index of cases.

¶ 54 In any event, R.Z. undercut his due process arguments by failing to seek the removal of his name from the NICS by following the procedure specified in section 13-9-124. *See supra* Part II.B.3. He had a statutory remedy for the inclusion of his name in the NICS. But R.Z. did not take the steps the General Assembly established to facilitate the removal of his name from the NICS.

3. The Court Did Not Improperly Shift to R.Z. the Burden of Proving that He Did Not Have a Mental Health Disorder

¶ 55 Lastly, R.Z. appears to argue that the April order placed an improper burden on him to prove that he did not have a mental health disorder. Section 13-9-124(5)(a) indeed places the burden on a petitioner to prove that the petitioner's name should be removed from the NICS because the petitioner is "not likely to act in a manner that is dangerous to public safety" and "[g]ranting relief to the petitioner [would] not [be] contrary to the public interest." But section 13-9-124 is not a mental health statute.

¶ 56 R.Z. conflates the burden of proving that a person should be certified for short-term treatment with the burden of seeking removal of the person's name from the NICS. Most significantly, he fails to show that requiring a person who was the subject of a certification order to prove that the person's name should be removed from the NICS violates the person's constitutional rights. R.Z. does not point to any legal authority supporting his contention that the right to bear arms enshrined in the Colorado Constitution bars the state from requiring a person to prove that the person's name should be removed from the NICS.

¶ 57 We perceive nothing unconstitutional in a requirement that a person whose name was added to the NICS must bear the burden of proving the grounds listed in section 13-9-124(5)(a) for removing the person's name from the NICS. More fundamentally, R.Z. does not contend that the government infringes upon the constitutional rights of a person with a mental health disorder by restricting the person's right to bear arms. Thus, someone who lost the right to bear arms under a short-term certification does not stand in the same position as a person unconstitutionally deprived of that right through a restriction inconsistent "with this Nation's historical tradition" of firearm regulation. *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 17 (2022).

III. Disposition

¶ 58 The orders are affirmed.

JUDGE JOHNSON and JUDGE MOULTRIE concur.