AGNIFILO INTRATER

July 17, 2025

The Honorable Gregory Carro
Supreme Court of the State of New York
100 Centre Street – Part 32
New York, NY 10013

Re: *People v. Luigi Mangione*, Ind. No. 75657/2024

Dear Judge Carro:

Luigi Mangione, through his counsel, submits this letter to raise yet another significant issue of misconduct on the part of the District Attorney. The District Attorney has subpoenaed Mr. Mangione's health insurer, and, if their account is to believed, they partially reviewed confidential, private, protected documents that the District Attorney readily admits are protected by the Health Insurance Portability and Accountability Act ("HIPAA"). There is no question that the District Attorney has no right to possess or review these documents. They did not seek a court order, nor did they secure a waiver from any party. Moreover, the information is not relevant to their case. Accordingly, at a minimum, the District Attorney has admittedly violated Mr. Mangione's rights under HIPAA and has obtained access to confidential privileged information.[1]

However, the situation is far worse than this. As set out fully below, the District Attorney's subpoena was false and fraudulent. The District Attorney falsely made up a court date—May 23, 2025—and drafted a fraudulent subpoena that if Aetna did not provide documents on that date, it would be in contempt of Court. Then, rather than having Aetna give the documents to the Court, as required by the already fraudulent subpoena, the District Attorney told Aetna to provide the documents directly to the District Attorney, intentionally eliminating the Court from the subpoena process and ensuring that the District Attorney would secure these confidential medical records

[1] As this Court is aware, this is the second time that the prosecution has violated Mr. Mangione's rights by improperly viewing his protected information—having previously violated Mr. Mangione's right to counsel by improperly listening to an 11-minute attorney-client phone call in April 2025, requiring a member of their team to be removed. In addition to these violations, in its June 4, 2025, response to Mr. Mangione's omnibus motions, the District Attorney's Office improperly listed Mr. Mangione's social security number, as well as his driver's license number and a prior home address—where civilians who have no connection to this case currently reside. This is after the District Attorney's Office failed to redact counsel's personal cellphone number from its April 25, 2025, letter addressing its improper review of Mr. Mangione's legal call. As these four examples make clear, the District Attorney's Office has been cutting corners and carelessly violating Mr. Mangione's rights in its unprecedented and unnecessary haste to try Mr. Mangione's non-capital state case before his federal death penalty case.

without either the Court or Mr. Mangione's counsel knowing or being able to object. Had they followed proper procedures required by law, this grievous error would never have happened.

Because the District Attorney has taken possession of, and at least partially reviewed, Luigi Mangione's confidential doctor-patient privileged and HIPAA protected medical records, and further because the District Attorney misused the subpoena process to obtain these protected records, this Court should impose an appropriate sanction after conducting a full evidentiary hearing to uncover the extent and nature of the significant privilege and HIPAA violation intentionally caused by the prosecutors.

Specifically, the defense requests discovery of all communications—written and oral—between the District Attorney's Office and Aetna, as well as a hearing where sworn testimony will be taken from, among others, the following people: (1) Joel Seidemann, who signed the unlawful subpoena; (2) Zachary Kaplan, who reviewed the confidential, protected materials received by the District Attorney pursuant to the unlawful subpoena; and (3) the Aetna representative (named in the People's email to the Court and counsel) who communicated with the District Attorney's Office in connection with the unlawful subpoena.

Based on the facts developed at this hearing, combined with other violations of Mr. Mangione's rights, including an admitted prior violation of his attorney-client privilege, we ask that the Court consider a range of appropriate sanctions, to include dismissal of the charges, precluding the People from accessing the HIPAA-protected materials they secured by an unlawful subpoena and/or recusing any member of the District Attorney's staff, including the assigned ADAs, from further involvement in this case.

1. The Unlawful Subpoena

On May 14, 2025, A.D.A. Joel Seidemann drafted and signed a Subpoena Duces Tecum to Aetna Health Inc., CT Corporation System, 28 Liberty Street, New York, NY 10005. The subpoena "commanded (Aetna) to appear before the Supreme Court of the County of New York, Part 32, at the Supreme Court Building, 100 Centre Street . . . on May 23, 2025 at 9:00, as a witness in a criminal action prosecuted by the People of the State of New York against Luigi Mangione, and to bring with you and produce the following items: The account number and period of time during which the following individual received coverage: Luigi Mangione[.]"

The return date of the trial subpoena, May 23, 2025, was not a court date for this matter. There was never a court proceeding scheduled for May 23, 2025, nor was there ever a court appearance scheduled for the entire month of May; rather, this is a completely made-up date which is not permitted by law, as trial subpoenas must only be returnable on a court date to the court. As a result, by commanding Aetna to appear on May 23, 2025, and to provide the materials under pain of being "adjudged guilty of a Criminal Contempt of Court, and liable to a file of one thousand

dollars and imprisonment for one year," the People were plainly lying to get the materials as soon as possible.[2]

The subpoena, which was signed only by ADA Seidemann and was not "so-ordered" (*i.e.*, signed by this Court), was accompanied by a letter from ADA Seidemann to CT Corporation System, also dated May 23, 2025, that stated that "in lieu of appearing personally with the requested documents, you may mail or deliver them to New York County Supreme Court, Part 32 . . . ." The letter also provided ADA Seidemann's office phone number and email address for any further communication. Through this cover letter, the District Attorney intentionally eliminated the Court from any role in this subpoena process even though the subpoena calls for medical information from an indicted defendant before the Court.

By keeping the existence of the subpoena from the Court, the People also intentionally kept it from defense counsel. Had defense counsel known that the District Attorney was attempting to access confidential medical information, the defense would have objected on several grounds. First, that the subpoena was a blatant abuse of process as the District Attorney lied about the existence of May 23, 2025, as a court date. Second, that the subpoena is an inappropriate effort to ascertain the existence of evidence under *Matter of Terry D.*, 81 N.Y.2d 1042 (1993). Third, that the subpoena sought confidential medical information to which the District Attorney was not entitled as a matter of law. Fourth, that the information sought by the subpoena is not relevant, as the People have maintained that this is a straightforward murder case.

By reaching a secret arrangement to have Aetna send the information to the District Attorney directly, and not to the Court, the District Attorney ensured that the confidential, HIPAA-protected, doctor-patient privileged information was not subject to challenge by the defense. As a result, due to the District Attorney's intentional efforts to keep the defense in the dark, the defense was unaware of this subpoena for Mr. Mangione's doctor-patient privileged, HIPAA-protected records until June 24, 2025—well after the District Attorney got these documents—when ADA Zachary Kaplan sent an email to the Court and counsel. The June 24, 2025, email stated that "on June 12, 2025, in response to this subpoena Aetna emailed the People the next four attached files." There is no indication that Aetna sent the materials to the Court. Rather, it appears that Aetna sent the files directly to the District Attorney by email.[3] Obviously, someone at the District Attorney's Office communicated with Aetna and told Aetna to email the materials to the District Attorney rather than provide them to the Court. As part of the hearing testimony, we request information as to the identity of this person and specifically what was said to Aetna. We also request a full copy of the email sent by Aetna and to whom it was sent.

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[2] On July 16, 2025, we asked the District Attorney why it chose May 23, 2025, as the return date, and what, if any, justification they had to choose that date. The Office's response was that we were not entitled to that information.

[3] As discussed further below, the defense requests all email correspondence between any representative of Aetna and any representative of the District Attorney's Office, as well as all phone records of any communications between the two.

Further, we request all communication between anyone at the District Attorney's Office and anyone at Aetna. We note that on June 11, 2025, at 4:49 pm, the Court emailed the parties that it was cancelling June 26, 2025, as a "control date for any outstanding issues." The Court administratively adjourned the case until September 16, 2025, for decision on the motions. In addition to all communications between the District Attorney and Aetna, we ask for any telephonic or other communication between the District Attorney and Aetna on June 11, 2025, to prompt Aetna to send the confidential information to the District Attorney the next day. It is clear that the District Attorney utilized a false and fraudulent subpoena to secure these confidential medical documents behind the back of both the Court and defense counsel so as to rush this case to trial in a manner that prejudices Mr. Mangione.

2. The Unlawful Subpoena Resulted in the People Coming Into Possession of Confidential Medical Information That It Should Not Have Ever Possessed

The People's unlawful subpoena requested two items from Aetna: (1) Mr. Mangione's account number; and (2) the time period during which Mr. Mangione received coverage from Aetna. In its June 12th response to this subpoena, Aetna violated HIPAA and unlawfully produced to the prosecution four files containing its "entire designated record set" related to Mr. Mangione. The records were 120 pages of what the People concede was private, confidential, protected medical information within the purview of HIPAA. In addition to being HIPAA-protected, the materials are also clearly within the scope of the doctor-patient privilege as they contain statements made by Mr. Mangione to health care providers in order to receive medical care and treatment as well as medical diagnoses. Indeed, the materials received by the District Attorney, pursuant to the unlawful subpoena, put the People on clear notice that the materials were in fact confidential under HIPAA and were privileged, each of which will be addressed below.

The People were on notice that the materials were protected under HIPAA. First, the cover letter from Aetna stated it was from the HIPAA Member Rights Team, which appeared both on top of the cover letter and as the signature line. Second, the cover letter advised that the materials were to be kept confidential. Third, each of the files sent to the District Attorney had in large-type bold letters **"Request for Protected Health Information."** This clear warning was on the top of the first page of every file sent to the District Attorney. It would be impossible for anyone to view a single page of these records and not immediately see that they were private, confidential medical records within the scope of HIPAA. Yet, the District Attorney's Office placed them into a discovery file and reviewed them.

The People were also on notice that the materials were within the doctor-patient privilege. Virtually every page of the over 120 pages of materials received by the People pursuant to the unlawful subpoena indicate different diagnoses as well as specific medical complaints made by Mr. Mangione. They are privileged on their face.

Nonetheless, the People received over 120 pages of materials when the subpoena requested only two items: (1) the account number; and (2) the period of time during which Mr. Mangione received coverage. Clearly, the sheer volume of materials alone should have put the People on immediate alert that the unlawful subpoena they served on Aetna resulted in far more material than

they requested, and that because of the nature of the unlawful subpoena, that this material may very well be both privileged and HIPAA protected. Nonetheless, the People are clear that they reviewed the materials but did not do so "in their entirety." We need sworn testimony to determine precisely what confidential medical files were reviewed, who reviewed them and when this review was conducted. We also need the computer forensic information of when these files were opened, by whom, and for how long.

On June 16, 2025, a conversation took place between ADA Kaplan and a named representative at Aetna. This is the only conversation referenced in the email; however, it may not be the only one they had. ADA Kaplan states that the Aetna representative advised that "Aetna mistakenly provided the defendant's 'entire designated record set' to the People." ADA Kaplan further explained that the representative said that this mistake occurred "because the defense has served Aetna with a subpoena for the designated record set materials around the same time the People served the above-described subpoena." This statement is false, as the defense did not serve a subpoena on Aetna.

As of June 16, 2025, the District Attorney knew three things. First, that it had used an unlawful subpoena, where it lied about a court date, to get medical, confidential, privileged HIPAA protected information concerning Luigi Mangione. Second, that the District Attorney had the protected materials sent directly to them, instead of to the Court. Third, that the result of its unlawful, fraudulent subpoena was a trove of protected medical information that it reviewed and continued to have in its files. Rather than immediately alerting the Court and counsel, the District Attorney's Office sat on this information for another eight days before disclosing that it was in possession of over a hundred pages of admittedly confidential, privileged medical information.

Argument

The People's Violation of Mr. Mangione's Doctor-Patient Privilege and HIPAA Rights Requires a Hearing to Determine the Degree and Nature of This Violation

There is no question that the People have violated Mr. Mangione's rights under HIPAA by possessing and reviewing the subpoenaed documents. However, the violation goes far beyond this. The violation also involves the intentional and knowing violation of his doctor-patient privilege. In addition, the HIPAA and privilege violations were due to the People falsely telling Aetna that May 23, 2025, was a court date when it was not, and by the People telling Aetna to provide the confidential material to the People directly instead of to the Court.

The law in this state is clear when it comes to subpoenas. "Subpoenas, of course, are process of the courts, not the parties." *People v. Natal*, 75 N.Y.2d 379, 384 (1990). "While by statute it is the District Attorney who issues a subpoena duces tecum (CPL 610.25(1)), the subpoena is nevertheless a mandate of the court issued for the court." *Id.* at 385. "CPL 610.25 (1) makes clear that where the District Attorney seeks trial evidence **the subpoena should be made returnable to the court, which has 'the right to possession of the subpoenaed evidence.'**" *Id.* at 385, quoting CPL § 610.25 (emphasis added). "It is for the court, not the prosecutor, to determine

where subpoenaed materials should be deposited, as well as any disputes regarding production." *Natal*, 75 N.Y.2d at 385.

Had the People followed the clear law, it would not have possessed and reviewed Mr. Mangione's records that are protected by the doctor-patient privilege and HIPAA. Had the People followed the law, the subpoenaed materials would have been provided to the Court, which could have alerted the parties to the self-evident reality that the subpoena resulted in privileged and HIPAA-protected materials. But the People refused to follow the law. Moreover, the People refused to follow the law when it came to a subpoena seeking medical information for an indicted defendant. Rather than following the law, the People drafted a fraudulent subpoena falsely stating that if Aetna did not provide documents on May 23, 2025, it would be in criminal contempt. This was false because, among other reasons, May 23, 2025, was not a court date for this case. Rather than waiting for an actual court date, the District Attorney simply made one up. It then falsely told Aetna that May 23, 2025, was an actual court date for this case when it knew it was not. This is a lie and a fraud to gain a tactical, strategic advantage: to compel production of medical information as soon as possible. Also, it is a lie and a fraud that the District Attorney never intended the defense to know about.

The People further perpetrated this lie and this fraud when it told the Aetna representative that it could fully comply with the subpoena by emailing the contents of its submission to the District Attorney directly. By doing this, the People removed the Court from overseeing this process and ensuring that the District Attorney did not come into possession of privileged or HIPAA-protected medical information. With the Court intentionally removed from the subpoena process, the People downloaded privileged and HIPAA materials it should never have possessed in the first place and reviewed them.

In addition, the prosecution's subpoena is an inappropriate effort to "ascertain the existence of evidence" which has been held to be an improper use of a subpoena. *Matter of Terry D.*, 81 N.Y.2d 1042, 1044 (1993); *People v. Doe*, 85 Misc.3d 686 (Sup. Ct. N.Y. Co. 2024); *People v. Crean*, 115 Misc.2d 526 (Sup. Ct. West. Co. 1982). In particular, the prosecution's subpoena was intended to ascertain details about Aetna's coverage of Mr. Mangione. However, the prosecution wanted to get this information by cheating, specifically by ensuring that the defense did not find out that it was gathering information about Mr. Mangione's medical history. This is why they made sure that the subpoena was not so-ordered and why it reached a secret deal with Aetna to have the offending information sent directly to the prosecutor out of view of the Court and without the Court's involvement. After all, the Court may have informed defense counsel, who would have objected to doctor-patient, HIPAA-protected information being provided to the District Attorney.

In conclusion, the District Attorney's Office violated well-established subpoena laws by falsely creating a court date, accepting subpoenaed records that should have been returnable to the Court and reviewing medical records that were clearly protected by the doctor-patient privilege and HIPAA. The defense therefore requests discovery of all communications—oral and written—between Aetna and the District Attorney's Office. In addition, we request a full evidentiary hearing with sworn testimony by all people with knowledge of how the subpoena was drafted, how Aetna was directed to provide this information to the District Attorney, instead of the Court, who

reviewed the protected materials, who was told about the protected materials and who supervised this process. In addition, based on the evidence developed through this discovery process and the requested hearing, the defense reserves the right to seek various remedies, including the recusal of the prosecution team, suppression of evidence or dismissal of the indictment.

Very truly yours,

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Counsel for Luigi Mangione