AGNIFILO INTRATER

August 19, 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:

We write in reply to the prosecution's August 8, 2025, response to counsel's July 17, 2025, letter regarding the prosecution's unlawful Aetna subpoena. While attempting to justify its inappropriate use of the prosecution's subpoena power, the District Attorney's Office purposefully ignores counsel's primary concern that at least one prosecutor improperly reviewed Mr. Mangione's protected medical records that the prosecution received from Aetna. As Assistant District Attorney Zachary Kaplan noted in his June 24, 2025, email to the Court first addressing this issue: "Upon first looking at the files and observing the number of pages, but before reviewing the files in their entirety, I realized that this appeared to contain a significant amount of materials. I stopped looking at the files and then obtained and reviewed the subpoena." (ADA Kaplan 6/24/25 Email). This email confirms that ADA Kaplan reviewed at least a portion of Mr. Mangione's protected medical records but fails to disclose how many files he reviewed or what the reviewed files contained. This calculated lack of transparency is concerning, as the files that Aetna produced contained medical diagnoses and statements made by Mr. Mangione to health care providers to receive medical care and treatment.

The District Attorney's Office has had multiple opportunities to explain the extent of ADA Kaplan's review of Mr. Mangione's protected medical records, including when someone from the District Attorney's Office spoke with the media after counsel's July 17, 2025, letter to the Court (described in footnote 2 below), and in its formal August 8, 2025, response to counsel's July 17, 2025, letter. Nevertheless, despite these opportunities, the District Attorney's Office continues to refuse to acknowledge to the Court or counsel the full extent of its improper review of Mr. Mangione's medical records. For this reason alone, this Court should conduct an evidentiary hearing as requested in counsel's July 17, 2025, letter.

Additionally, a gaping, factual chasm exists between the explanations provided by the District Attorney's Office and Aetna. The latter publicly insists that they behaved "appropriately" in responding to the subpoena, contradicting the District Attorney's assertion that the records were provided to them "mistakenly" in error. In fact, Aetna spokesperson, Phil Blando, made the following statement to CNN after counsel's July 17, 2025, letter: "Aetna received a subpoena for certain medical records, and we provided them appropriately." https://www.cnn.com/2025/

07/18/us/luigi-mangione-medical-records. Mr. Blando repeated this position after the prosecution's August 8, 2025, response, noting "Our response is the same as before." https://www.businessinsider.com/ny-blames-aetna-defense-lawyers-luigi-mangione-healthcare-records-2025-8. Given the factual discrepancies between the District Attorney's Office and Aetna, this Court should conduct an evidentiary hearing so that the Court can fashion an appropriate remedy commensurate with the gravity of the violation. As outlined in the July 17, 2025, motion, such remedies may take the form of 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. Moreover, 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.

Even more brazen, in its response, the District Attorney's Office defends making its subpoena returnable for a non-court day by arguing that CPL § 610.25 states that "'nothing in this article shall be deemed to prohibit the designation of a return date for a subpoena duces tecum prior to trial.'" (8/5/25 Letter at 1 (quoting CPL § 610.25(2).) This statement purposefully misses the point and misstates the law. **Although CPL § 610.25(2) allows a party to make a subpoena returnable prior to trial, the return date still needs to be an actual court date**—not some random date that the District Attorney's Office chooses.[1] After all, under New York law, a subpoena "is a process of a court directing the person to whom it is addressed to attend and appear as a witness in a designated action or proceeding in such court, on a designated date and any recessed or adjourned date of the action or proceeding." CPL § 610.10(2). This language contemplates compelling a witness to testify in court, which can only occur on an actual court date. Moreover, this definition of subpoena applies equally to a subpoena duces tecum. *See* CPL § 610.10(3) ("As used in this article, 'subpoena' includes a 'subpoena duces tecum.' A subpoena duces tecum is a subpoena requiring the witness to bring with him and produce specified physical evidence."). Consequently, a subpoena duces tecum must also be returnable on an actual court date.

Here, the District Attorney's Office knew that there was no court appearance scheduled for May 23, 2025, yet they nonetheless issued a subpoena to "command[]" a witness to appear "as a witness in a criminal action." As courts have noted, "[t]he subpoena power, whether exercised by the prosecution or defense, is not so broad as to allow attorneys to force witnesses to attend proceedings in which they are not scheduled to testify." *People v. Neptune*, 161 Misc. 2d 781, 783 (Sup. Ct. Kings Cty. 1994); *see also People v. Cruz*, 86 A.D.3d 782, 783 (3rd Dep't 2011) ("[B]ecause of the possible consequences of a failure to comply with such subpoena, courts have imposed limitations on the use thereof. Indeed, subpoenas can only be issued 'for the valid purpose of compelling the production of evidence before a court . . . [and] [r]equiring a witness to attend

[1] As ADA Seidemann is well aware, the Manhattan District Attorney's Office for decades has explicitly trained all ADAs that a trial subpoena must only be returnable to an actual court date as this is required by law, and any assertion to the contrary is disingenuous.

criminal proceedings when there is no chance of testifying serves no valid purpose.'" (quoting *Neptune;* other citation omitted)). But that is exactly what the prosecution did here by subpoenaing Aetna as a witness for a non-court date. This was improper.

Lastly, after acknowledging that "mistakes do occur" in court proceedings, the prosecution's response goes on to blame Aetna and defense counsel for the District Attorney's mistakes. Specifically, the District Attorney's Office asserts that Aetna "erroneously sent [the District Attorney's Office] materials that exceeded the request set out in the subpoena" and that, "[l]ike Aetna," defense counsel "erred" and "compounded Aetna's mistake" by resending the subpoenaed Aetna files back to the prosecution in an email. (8/5/25 Letter at 2–3.) This response by the prosecution is nonsensical. Even assuming Aetna's subpoena response exceeded what the District Attorney's Office requested, that still does not justify the prosecution reviewing Mr. Mangione's protected medical records that it was mistakenly given. Notably, the subpoena requested two items: (1) Mr. Mangione's account number; and (2) the time period during which Mr. Mangione received coverage from Aetna. In response, Aetna produced more than 120 pages of Mr. Mangione's medical records. Yet, despite the vast discrepancy between what they asked for and what they received, the prosecution ignored the inconsistency and proceeded to start reviewing the protected medical records. In doing so, the District Attorney's Office knew it was reviewing information in excess of its subpoena. The blame for that lies with the prosecutors, not Aetna.

Similarly, accusing defense counsel of "compounding Aetna's mistake" is baseless and misstates the facts. ADA Kaplan emailed the Court and counsel of their egregious error on June 24, 2025, in an email that attached both their Aetna subpoena and Aetna's subpoena response containing Mr. Mangione's medical records. Counsel merely *responded* to this email chain, removing the Court, to give the prosecutors an opportunity to explain why they violated the law by requiring Aetna to comply with their subpoena on May 23, 2025, as there was no court appearance scheduled for that date—a question the prosecution has still not answered. Counsel's response, which included the prosecution's original email and their attachments, did not attach anything new or anything the prosecution did not already have and review. The mistake was committed by the prosecution possessing and reviewing the records in the first place; by responding to the prosecution's email, the defense did not give something to the prosecution that they did not already possess and, more importantly, review. Once the prosecution reviewed Mr. Mangione's confidential and private medical information, they could not un-ring that bell merely by emailing them to the Court and counsel. Once ADA Kaplan had already ingested Mr. Mangione's private health information, the damage had already been done. It is hard to see how a reply to their email after they had reviewed the records "compounded Aetna's mistake," as the files were already in their possession and reviewed by them. By seeking to blame defense counsel for "compound[ing] Aetna's mistake," the District Attorney's Office is merely trying to distract from its own improper conduct of reviewing Mr. Mangione's medical records.[2]

[2] The District Attorney's Office attempted to do the same when speaking with the media after the defense filed its original July 17, 2025, letter addressing the prosecution's improper review of Mr. Mangione's medical records. *See* https://abcnews.go.com/US/luigi-mangione-prosecutors-violating-health-privacy-rights-defense/story?id=123863209. That online article included the following: "The error was compounded by defense counsel resending to prosecutors the very same

For all the reasons stated above and in counsel's July 17, 2025, letter, we request an evidentiary hearing to uncover the full scope of prosecution's conduct and to determine how much of Mr. Mangione's medical records were improperly reviewed and by whom.

Respectfully submitted,

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items prosecutors had already deleted, a source familiar with the subpoena said." The "source familiar with the subpoena" was someone from the District Attorney's Office.