

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 32

THE PEOPLE OF THE STATE OF NEW YORK

v.

LUIGI MANGIONE,

Defendant.

NOTICE OF MOTION
Ind. No. 75657/2024

PLEASE TAKE NOTICE that, upon the annexed affirmation of KAREN FRIEDMAN AGNIFILO, Esq., sworn and affirmed to on April 30, 2025, upon the indictment, the limited grand jury transcripts that have been disclosed to the defense, supporting papers, discovery received thus far, and all proceedings herein, defendant LUIGI MANGIONE will move this Court for the following Orders:

1. Suppressing Mr. Mangione's statements to law enforcement as officers failed to provide him with *Miranda* warnings in violation of his Fifth Amendment rights;
2. Suppressing the evidence seized at the time of his arrest because law enforcement conducted a warrantless search of Mr. Mangione's backpack in violation of his Fourth Amendment rights after he was already handcuffed and surrounded by ten police officers;
3. Precluding the District Attorney's Office from eliciting lay non-eyewitness identification testimony at trial;
4. Dismissing the indictment's terrorism-related counts (Counts One and Two) as the grand jury evidence failed to establish the required element that Mr. Mangione intended to intimidate or coerce a civilian population, influence the policies of a unit of government by intimidation or coercion or affect the conduct of a unit of government by murder, assassination or kidnapping;
5. Dismissing the indictment because concurrent state and federal prosecutions violate the Double Jeopardy Clause, the Fourteenth Amendment's Due Process Clause and Mr. Mangione's constitutional rights against self-incrimination, to meaningfully defend himself, to a fair and impartial jury and to the effective assistance of counsel; and

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6. Granting such other relief as the Court deems appropriate.

PLEASE TAKE FURTHER NOTICE, that defendant LUIGI MANGIONE reserves the right to file such additional motions as may be necessitated by additional discovery provided by the District Attorney's Office, the Court's decision on this motion or by further developments which, even by the exercise of due diligence, the defendant could not now be aware of.

Dated: April 30, 2025
New York, NY

Respectfully submitted,

AGNIFILO INTRATER LLP

By:



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cc: District Attorney's Office

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v.

Ind. No. 75657/2024

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Defendant.
_____X

**KAREN FRIEDMAN AGNIFILO'S
AFFIRMATION IN SUPPORT OF MOTION**

Karen Friedman Agnifilo
Marc Agnifilo
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**AFFIRMATION IN
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Ind. No. 75657/2024

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:

KAREN FRIEDMAN AGNIFILO, an attorney at law duly admitted to practice in the courts of New York State, affirms the following to be true under the penalty of perjury:

1. I am an attorney and Of Counsel at Agnifilo Intrater LLP, a law firm located in New York City, and I am an attorney for Luigi Mangione. I make this affirmation in support of a motion dated April 30, 2025, seeking Orders (1) suppressing Mr. Mangione's statements that were obtained in violation of his Fifth Amendment rights; (2) suppressing the evidence seized from the warrantless search of Mr. Mangione's backpack in violation of his Fourth Amendment rights; (3) precluding the District Attorney's Office from eliciting lay non-eyewitness identification testimony at trial; (4) dismissing the terrorism-related counts in the indictment for insufficient evidence in the Grand Jury; (5) dismissing the indictment because concurrent state and federal prosecutions violate the Double Jeopardy Clause, the Fourteenth Amendment's Due Process Clause and Mr. Mangione's constitutional rights against self-incrimination, to meaningfully defend himself, to a fair and impartial jury and to the effective assistance of counsel; and (6) granting such other and further relief as the Court deems just and proper.

2. This affirmation is made upon information and belief. The basis for such information and the grounds for such belief are the indictment, incomplete grand jury transcripts

and exhibits, prior court proceedings, materials previously disclosed by the District Attorney's Office, information disclosed in court by the District Attorney's Office and applicable legal authorities.

I. OVERVIEW

3. 377 people were murdered in New York City in 2024; only one, however—the December 4, 2024, shooting of UnitedHealthcare CEO Brian Thompson—has led to a legal tug-of-war between state and federal prosecutors as they fight for who controls the fate of 26-year-old Luigi Mangione.

4. As a result of unprecedented prosecutorial one-upmanship, Mr. Mangione now faces three simultaneous prosecutions in three different jurisdictions—one of which is seeking the death penalty, while another is seeking life imprisonment¹—all for one set of facts. Yet, despite the gravest of consequences for Mr. Mangione, law enforcement has methodically and purposefully trampled his constitutional rights by interrogating him without *Miranda* warnings in violation of the Fifth Amendment and illegally searching his property without a warrant in violation of the Fourth Amendment. *See* U.S. Const. amend. IV, V.

5. Compounding these constitutional violations, the District Attorney's Office has expanded New York's terrorism statute well beyond its legislative intent and its natural and legal definition to seek enhanced charges against Mr. Mangione, while also violating Mr. Mangione's rights against Double Jeopardy by simultaneously charging him alongside the federal government for identical alleged conduct. Critically, these concurrent prosecutions also violate due process and Mr. Mangione's constitutional rights to present a defense and not incriminate himself because the state and federal prosecutions have conflicting theories, and Mr. Mangione's defense of one case

¹Mr. Mangione is also facing forgery and gun possession charges in the Commonwealth of Pennsylvania.

could potentially be used against him in the other prosecution. As discussed below, concurrent state and federal prosecutions also violate Mr. Mangione's constitutional rights to a fair and impartial jury and to the effective assistance of counsel. Finally, forcing Mr. Mangione to defend himself in the instant case will remove rights afforded to him in the death penalty case.

6. Accordingly, Mr. Mangione requests that this Court suppress his statements to law enforcement and the evidence illegally recovered without a warrant from his backpack. In addition, pursuant to *People v. Mosley*, 41 N.Y.3d 640 (2024), discussed below, this Court should preclude the District Attorney from eliciting lay non-eyewitness identification testimony at trial. Mr. Mangione also requests that this Court dismiss Counts One and Two of the indictment that rely on New York's inapplicable terrorism statute and are not supported by the grand jury evidence. Lastly, Mr. Mangione also requests that this Court dismiss the indictment because concurrent state and federal prosecutions violate the Double Jeopardy and Due Process Clauses and limit his constitutional rights against self-incrimination, to meaningfully defend himself, to a fair and impartial jury and to the effective assistance of counsel. In the alternative, this Court can ameliorate these constitutional concerns by staying this state case while Mr. Mangione literally fights for his life in federal court.

II. ALLEGED FACTS

7. On December 4, 2024, at 6:45 a.m., UnitedHealthcare CEO Brian Thompson was shot outside the company's annual investor conference at the New York Hilton Midtown. Mr. Thompson, who had been subject to previous threats,² died at a local hospital approximately 30 minutes later.

²See, e.g., *Brian Thompson's wife said threats had been made against UnitedHealthcare CEO before shooting*, NBC NEW YORK (Dec. 4, 2024), <https://www.nbcnewyork.com/manhattan/brian-thompson-united-healthcare-ceo-threats/6039242/>.

8. Following the shooting, the NYPD released video of the shooting and pictures of the masked suspect to the public. Within hours of the shooting, law enforcement also disseminated to the media and the public that two of the discharged shell casings had the words “DENY” and “DEPOSE” inscribed on them, and that the word “DELAY” was inscribed on a bullet recovered at the scene.³ The NYPD began a nationwide manhunt to search for the masked perpetrator and also enlisted the help of the public by posting a reward for information leading to his capture.

9. The NYPD viewed thousands of hours of surveillance video to attempt to locate the shooter and where the shooter had been in the previous weeks. The NYPD Police Commissioner stated that she assigned ten detectives from the NYPD’s Intelligence Division to search through social-media profiles of hundreds of young men who looked similar to the shooter and had also posted negative comments about the health insurance industry.⁴

10. On the morning of December 9, 2024, Patrolmen Joseph Detwiler and Tyler Frye of the Altoona Police Department responded to a McDonald’s restaurant, based on a 911 call of a “suspicious male that looked like the shooter from New York City.” (GJ Tr. at 99.) Arriving at the McDonald’s, the patrolmen, both in full uniform and displaying badges, approached Mr. Mangione at 9:29 a.m. as he sat at a table in the back of the restaurant. As pictured below, Mr. Mangione was sitting at a corner table with a wall behind him and to his left⁵:

³Law enforcement incorrectly initially reported to the media that the words inscribed on the bullets were “Deny,” “Defend” and “Depose,” before correcting their mistake days later. *See, e.g.,* Tom Murphy, *Words on ammo in CEO shooting echo common phrase on insurer tactics: Delay, deny, defend*, AP, (Dec. 5. 2024), <https://apnews.com/article/unitedhealthcare-ceo-shooting-delay-deny-defend-depose-ee73ceb19f361835c654f04a3b88c50c>.

⁴*See* Noah Shachtman, *Commish Tisch to the Rescue*, NEW YORK MAGAZINE (March 8, 2025), <https://nymag.com/intelligencer/article/nypd-commissioner-jessica-tisch-eric-adams.html>.

⁵The still photos embedded in this motion are screen shots from the police body-worn camera footage provided to the defense by the prosecution.



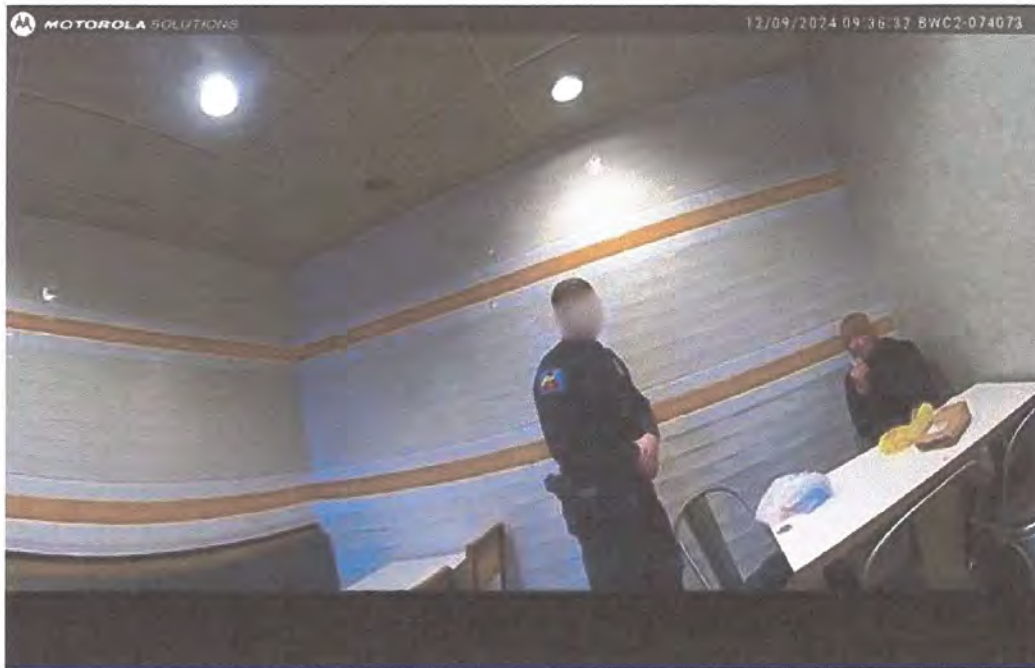
11. Patrolmen Detwiler and Frye positioned themselves to Mr. Mangione's right, blocking his only exit from the table as he was already surrounded by two walls and a table. Patrolman Detwiler first asked Mr. Mangione to pull down his face mask and then asked for his name. Patrolman Detwiler told Mr. Mangione that someone had called the police because they thought he was suspicious. Both Patrolmen were in uniform and fully armed.

12. After Patrolman Detwiler asked to see Mr. Mangione's identification (Mr. Mangione is alleged to have provided a New Jersey license in the name of Mark Rosario), the patrolman asked Mr. Mangione if he was from New Jersey and whether he had been to New York recently. As Mr. Mangione prepared to eat his food, Patrolman Detwiler moved even closer to Mr. Mangione and asked him what he was doing in New York. Before Mr. Mangione even responded, Patrolman Detwiler asked him to stand up and put his hands on top of his head—with Detwiler grabbing and lifting Mr. Mangione's right wrist above his head. Patrolman Detwiler asked Mr.

Mangione why he was nervous, as Detwiler frisked Mr. Mangione. Patrolman Detwiler ordered Mr. Mangione to sit back down at the table and directed Patrolman Frye to talk to Mr. Mangione, while Detwiler motioned for Frye to move physically closer to Mangione to reinforce Mangione's inability to leave. Mr. Mangione was cooperative and complied with every request.

13. As Patrolman Frye effectively had Mr. Mangione in custody while he stood watch over him and blocked any potential exit, Patrolman Detwiler went outside to call another officer and tell him that he was "100% sure" that Mr. Mangione was the individual that law enforcement was looking for connected to the December 4, 2024, shooting in New York.

14. Patrolman Detwiler returned to the back area of the McDonald's to further interrogate Mr. Mangione and asked if he was from New Jersey, what he was doing in Altoona and whether he had been to New York recently. Even though Patrolman Detwiler had already decided that Mr. Mangione was the New York shooter, he told Mr. Mangione, as a pretext for the police interaction, that they were there because Mr. Mangione had been at the McDonald's for 40 minutes. Patrolman Frye remained in his strategic position blocking Mr. Mangione's exit as Detwiler continued interrogating Mr. Mangione:



15. At 9:41 a.m., twelve minutes after they first approached Mr. Mangione, Patrolman Detwiler moved a backpack from the floor where Patrolman Frye had been blocking Mr. Mangione's path to an area far out of Mr. Mangione's reach. In the next minute, five additional uniformed and armed officers entered the back area of the McDonald's where Mr. Mangione was detained and in custody.

16. Patrolman Detwiler ordered another officer to stand next to Patrolman Frye (forming an armed human wall trapping Mr. Mangione at the back of the restaurant) as Detwiler walked outside to talk with other officers to confirm that Mr. Mangione fit the description of the New York suspect.

17. When Patrolman Detwiler reentered the McDonald's at 9:45 a.m., there were three patrolmen surrounding Mr. Mangione, and Mr. Mangione's backpack was approximately six feet away on a table. Notably, two of the patrolmen were positioned between Mr. Mangione and the

backpack:



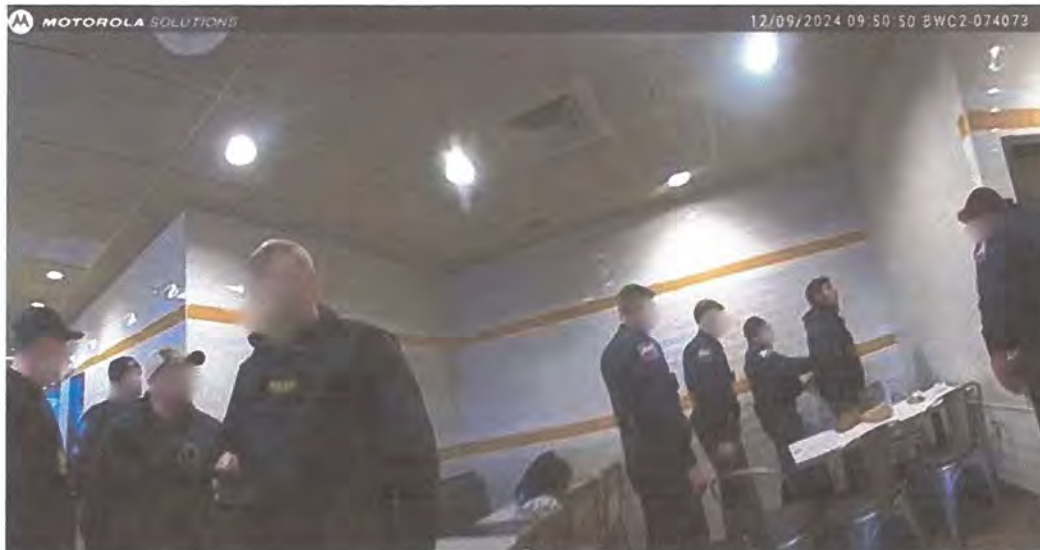
18. At 9:46 a.m., with eight officers now on the scene, another officer asked Patrolman Detwiler if he had read Mr. Mangione his rights as required by the Supreme Court's ruling in *Miranda v. Arizona*, 384 U.S. 436 (1966)). When Patrolman Detwiler responded that he had not, the officer told Detwiler to tell Mr. Mangione that he was under official police investigation and to read Mr. Mangione his rights. Patrolman Detwiler informed Mr. Mangione that he was under official police investigation and that he would be arrested for "false ID" if he gave the police a false name again.

19. Still without reading Mr. Mangione his *Miranda* rights, Patrolman Detwiler continued interrogating Mr. Mangione by asking if his name was Mark Rosario, to which Mr. Mangione responded, "No." Patrolman Detwiler asked Mr. Mangione for his real name and his date of birth, which Mr. Mangione provided. Another officer at the scene asked Mr. Mangione twice why he lied about his name. At this time, there were nine officers surrounding Mr. Mangione

and blocking his exit from McDonald's.

20. At 9:48 a.m.—nearly twenty minutes after law enforcement first approached Mr. Mangione, prevented him from leaving and asked him numerous interrogation questions—Patrolman Stephen Fox finally read Mr. Mangione his *Miranda* warnings. After informing Mr. Mangione of his constitutionally protected right to remain silent, Patrolman Fox asked Mr. Mangione if he wanted to talk to law enforcement. Mr. Mangione exercised his constitutional right to remain silent and expressed that he did not want to speak to law enforcement. Patrolman Fox told Mr. Mangione that he “was not in custody at this point,” despite the fact that, at that moment, there were ten officers in the back of the McDonald's where Mr. Mangione was sitting, they had already decided with 100% certainty that he was the shooter, and he was clearly in custody and not free to leave. Patrolman Fox then asked Mr. Mangione why he had a fake ID. After Mr. Mangione did not answer, Patrolman Fox ordered Mr. Mangione to stand and put his hands on the wall so Fox could pat him down, to which Mr. Mangione complied in all respects with these directives.

21. At 9:50 a.m., approximately 90 seconds after telling Mr. Mangione that he was not in custody despite being surrounded by officers, and after he had been patted down twice, Patrolman Fox handcuffed Mr. Mangione and thoroughly searched him again. Mr. Mangione remained standing, handcuffed and surrounded by officers as they waited for verification of his identification:



22. At 9:54 a.m., Patrolman Detwiler walked out of the McDonald's to discuss Mr. Mangione's identification with another officer. During this conversation and without any explanation, Patrolman Detwiler covered his body-worn camera with his hand to prevent the camera from recording twenty seconds of his conversation.

23. At 9:58 a.m., several officers began searching through Mr. Mangione's jacket and pockets and frisked him again. At the same time, Patrolwoman Christy Wasser and Patrolman Fox began searching through the backpack law enforcement had placed on a table out of Mr. Mangione's reach more than 17 minutes earlier.

24. As part of these warrantless searches, Patrolwoman Wasser opened Mr. Mangione's backpack and fully searched the backpack, its compartments and its contents, including closed bags that were within the backpack while Mr. Mangione stood handcuffed and surrounded by officers who were positioned between Mr. Mangione and his backpack:



25. As part of this warrantless search, Patrolman Fox retrieved a small item from inside the backpack that was enclosed in cardboard and wrapped in tape; Patrolman Fox took out his knife and sliced open the tape to find a computer chip inside.

26. The officers continued their warrantless search through Mr. Mangione's backpack at McDonald's even after he was removed from the restaurant by other officers and driven to the precinct. During this continued search at McDonald's, Patrolwoman Wasser recovered a gun magazine loaded with bullets. Now realizing she had made a potentially devastating mistake by thoroughly searching the backpack of a murder suspect in a significant New York press case without a warrant, she suddenly stated that she was searching through the backpack at McDonald's to make sure there "wasn't a bomb or anything in here" before putting the backpack in the car. The falsity of that comment was made clear seconds later when another officer at McDonald's stated "Now that we found that [i.e., the loaded magazine], let's just bring it back" to the precinct. Suddenly not concerned about a "bomb," Patrolwoman Wasser placed all the items back into the backpack and stopped searching. Patrolwoman Wasser repeated her comment that she was making

sure there were no bombs in the backpack, as another officer commented that “at this point we probably need a search warrant for it.” Without calling for the bomb squad, evacuating the McDonald’s or even searching for a bomb, Patrolwoman Wasser placed the backpack in her police car and brought it to the precinct.

27. Patrolwoman Wasser left McDonald’s at 10:04 a.m. There is no body-worn camera footage from her for the next 11 minutes as she drives to the precinct with the backpack. At 10:16 a.m., one minute after arriving at the precinct, Patrolwoman Wasser continued her warrantless search of the backpack. Patrolwoman Wasser first re-opened the same backpack compartment that she had started searching at the McDonald’s before immediately closing that compartment and opening the front compartment of the backpack as if she was specifically looking for something. Instantly, she “found” a handgun in the front compartment.

28. After finding the gun at the precinct, Patrolwoman Wasser again explained to another officer that she quickly searched the bag at McDonald’s to make sure there were “no bombs or anything.” Patrolwoman Wasser did not explain why she did not seek a warrant once she had arrived at the precinct.

29. Patrolwoman Wasser continued to search the backpack at the precinct without a warrant and recovered a silencer, a red notebook containing Mr. Mangione’s personal writings, additional writings, a computer chip, an iPhone and several USB flash drives.

30. Over seven hours after the warrantless search of Mr. Mangione’s backpack, the Altoona Police Department finally sought a search warrant at 5:14 p.m. This warrant application sought permission to search and seize the items from Mr. Mangione’s backpack that law enforcement had already searched several times and seized earlier that morning.

31. Mr. Mangione was formally arrested and charged in Altoona with forgery,

possession of a weapon and tampering with records or identification, possession of an instrument of a crime (for possessing a silencer) and furnishing a false identification to a law enforcement officer.

32. On December 17, 2024, the New York County District Attorney's Office publicly announced that Mr. Mangione had been charged by a grand jury in an 11-count indictment alleging the following crimes: (1) Murder in the First Degree (Penal Law § 125.27(1)(a)(xiii)); (2) Murder in the Second Degree as a Crime of Terrorism (Penal Law §§ 125.25(1), 490.25); (3) Murder in the Second Degree (Penal Law § 125.25(1)); (4) Criminal Possession of a Weapon In the Second Degree (Penal Law § 265.03(1)(b)); (5) Criminal Possession of a Weapon in the Second Degree (Penal Law § 265.03(3)); (6) Criminal Possession of a Weapon in the Third Degree (Penal Law § 265.02(7)); (7) Criminal Possession of a Weapon in the Third Degree (Penal Law § 265.02(2)); (8) Criminal Possession of a Weapon in the Third Degree (Penal Law § 265.02(8)); (9) Criminal Possession of a Weapon in the Third Degree (Penal Law § 265.02(8)); (10) Criminal Possession of a Weapon in the Fourth Degree (Penal Law § 265.01(9)); and (11) Criminal Possession of a Forged Instrument in the Second Degree (Penal Law § 170.25). Two of these charges, Murder in the First Degree (Count One) and Murder in the Second Degree as a Crime of Terrorism (Count Two) rely on the terrorism statute under Article 490 of the Penal Law.

33. During a press conference by the Manhattan District Attorney and the NYPD Police Commissioner, announcing these charges, there was no mention whatsoever of any federal case.

34. On December 19, 2024, after waiving extradition to New York, Mr. Mangione was transported via procession in a fleet of over a dozen police cars and then was flown via plane and helicopter to New York City from Pennsylvania. Upon arrival, Mr. Mangione was paraded in a choreographed highly publicized "perp-walk" by the NYPD, the FBI and the New York City

mayor.

35. Later that morning, counsel was on the way to this Court for a previously arranged afternoon Supreme Court arraignment at 2:00 pm. Before Mr. Mangione could be brought to this Court for his planned state court arraignment, the FBI unexpectedly seized custody of Mr. Mangione and brought him to the Southern District of New York where he was charged by federal complaint, filed the night before, charging Mr. Mangione with Stalking (two counts), Murder Through Use of a Firearm and a Firearms Offense. These charges are based on the same facts and evidence as the New York state indictment. Mr. Mangione was remanded to federal custody at the Metropolitan Detention Center in Brooklyn, where he is currently still detained.

36. On December 23, 2024, Mr. Mangione was produced to this Court and was arraigned on the pending indictment.

37. To date, the District Attorney's Office has produced more than a terabyte of information in discovery. Notably, the District Attorney's Office has withheld additional discoverable materials, including portions of grand jury testimony.

38. On April 1, 2025, the United States Attorney General directed the Southern District of New York prosecutors to seek the death penalty. On April 17, 2025, the federal prosecutors formally indicted Mr. Mangione for the charges listed in the federal complaint. On April 24, 2025, the federal prosecutors filed their Notice of Intent to seek the death penalty and, on April 25, 2025, Mr. Mangione was arraigned in federal court.

III. MEMORANDUM OF LAW

A. MR. MANGIONE'S STATEMENTS TO LAW ENFORCEMENT MUST BE SUPPRESSED BECAUSE THEY WERE UNCONSTITUTIONALLY OBTAINED THROUGH INTERROGATION WITHOUT *MIRANDA* WARNINGS WHILE MR. MANGIONE WAS IN CUSTODY

39. New York law is clear: a defendant's statements obtained through custodial interrogation without *Miranda* warnings should be suppressed. *See, e.g., People v. Corey*, 209 A.D.3d 1306, 1307 (4th Dep't 2022) (vacating the defendant's plea where the trial court failed to suppress the portions of the defendant's statements made without prior *Miranda* warnings while in custody and in response to police questioning); *People v. Dorvil*, 175 A.D.3d 708, 710 (2d Dep't 2019) ("Under these circumstances, the defendant was improperly subjected to custodial interrogation without being advised of his *Miranda* rights, requiring suppression of those statements."); *People v. Crawford*, 163 A.D.3d 986, 987 (2d Dep't 2018) (noting that the hearing court erred by not suppressing the defendant's pre-*Miranda* statements that were the product of custodial interrogation); *People v. Davis*, 106 A.D.3d 144, 152 (1st Dep't 2013) ("When, as part of a continuous chain of events, a defendant is subjected to custodial interrogation without *Miranda* warnings, any statements made in response, as well as any additional statements made after the warnings are administered and questioning resumes, must be suppressed." (quotation omitted)).

40. In assessing the admissibility of *Miranda*-less statements, courts must determine (1) whether the police questioning constituted interrogation; and (2) whether the defendant was in custody. *See, e.g., People v. Cabrera*, 41 N.Y.3d 35, 52 (2023) ("*Miranda* warnings must be administered when an interrogation occurs 'after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.'" (quoting *Miranda v. Arizona*, 384 U.S. 436, 445 (1966))).

41. For *Miranda* purposes, interrogation refers to any questioning or actions by law enforcement officers that are reasonably likely to elicit an incriminating response from a suspect. *People v. Paulman*, 5 N.Y.3d 122, 129 (2005) (“The term ‘interrogation’ under *Miranda* refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response.”).

42. In this case, when Patrolman Detwiler initially approached Mr. Mangione, he already believed that he was the New York shooter. When asking Mr. Mangione if he had been to New York recently, Patrolman Detwiler was seeking to elicit an incriminating response. This question was obviously important enough that Patrolman Detwiler asked it numerous times—including after telling another officer that he was “100% sure” that Mr. Mangione matched the New York suspect. In asking this question, Patrolman Detwiler knew it was likely to elicit an incriminating response because there was nothing about their interaction or being in McDonalds that related to New York, other than the shooting.

43. The standard for when someone is considered in “custody” is met here as well. The standard for assessing a suspect’s custodial status is “whether a reasonable person innocent of any wrongdoing would have believed that he or she was not free to leave.” *People v. Paulman*, 5 N.Y.3d at 129; *People v. Yuki*, 25 N.Y.2d 585, 589 (1969) (“The test is not what the defendant thought, but rather what a reasonable man, innocent of any crime, would have thought had he been in the defendant’s position.”).

44. Here, there can be no doubt that Mr. Mangione was in custody when interrogated by the police. When first approaching Mr. Mangione, Patrolmen Detwiler and Frye deliberately and strategically positioned themselves in a way to prevent Mr. Mangione from leaving from the

back of the McDonald's. In addition, before walking out of the McDonald's, Patrolman Detwiler made certain to position Patrolman Frye closer to Mr. Mangione to prevent his exit. Patrolman Detwiler also directed other armed officers where to stand in order to limit Mr. Mangione's movements. From the time they first approached Mr. Mangione, the officers intentionally placed themselves in such a way to ensure Mr. Mangione could not leave. By intentionally blocking Mr. Mangione's ability to move past them, the patrolmen made clear to Mr. Mangione—or anyone else who was in his position—that he was not free to leave. Mr. Mangione's inability to leave was made even clearer when additional armed officers entered McDonald's and positioned themselves to prevent him from leaving.

45. An objective person in Mr. Mangione's position would also have believed that he was not free to leave because the significant uniformed, armed police presence in the McDonald's was disproportionate with Patrolman Detweiler's statement that the police were there because Mr. Mangione had been sitting at the McDonald's for 40 minutes. A trivial offense such as loitering or trespass would not require such a significant police reaction. Rather, the number of officers at McDonald's limiting his movement would indicate to any objective person that the officers were there to prevent him from leaving. *See, e.g., People v. Pabon*, 120 A.D.2d 685, 686 (2d Dep't 1986) ("Under the circumstances of this case, a reasonable, innocent man in the defendant's position, surrounded by six police officers, albeit in his home, would have considered himself in custody."); *People v. S.S.*, 190 N.Y.S.3d 666 at *3 (N.Y. Sup. Ct. Kings Cnty. 2023) ("The police officers surrounded the defendant as he stood outside the apartment. The defendant's freedom was restricted to the hallway, and the police activity conveyed the impression the police had decided to arrest the defendant.").

46. Despite Mr. Mangione's inability to leave, Patrolman Detwiler continued to

question Mr. Mangione without *Miranda* warnings—even after another officer instructed Patrolman Detwiler to inform Mr. Mangione that he was under official police investigation and to read Mr. Mangione his rights. Moments later, another officer asked Mr. Mangione twice why he lied about his name—all while being surrounded by nine uniformed police officers blocking Mr. Mangione’s exit from McDonald’s.

47. Because law enforcement violated Mr. Mangione’s Fifth Amendment rights while he was in custody, counsel moves to suppress all the statements Mr. Mangione made to law enforcement between December 9, 2024, and December 19, 2024.⁶

48. In the alternative, this Court should conduct a hearing, pursuant to *People v. Huntley*, 15 N.Y.2d 72 (1965) to determine whether law enforcement obtained Mr. Mangione’s statements in violation of his Fifth Amendment rights.

B. ALL EVIDENCE RECOVERED FROM MR. MANGIONE’S BACKPACK MUST BE SUPPRESSED BECAUSE LAW ENFORCEMENT FAILED TO OBTAIN A SEARCH WARRANT BEFORE SEARCHING THE BACKPACK

1. Legal Standard for Warrantless Searches in New York

49. Altoona law enforcement failed to follow fundamental Fourth Amendment case law (and basic police procedure) by failing to obtain a search warrant before searching through Mr. Mangione’s backpack and the closed containers within the backpack. Police conducted this warrantless search even though there were no exigent circumstances as Mr. Mangione was already in handcuffs, the backpack was on a table over six feet away and Mr. Mangione was separated from this table by a wall of armed officers. As confirmed by body-worn camera footage, the entire search of the backpack was done well after it was secured and moved far from Mr. Mangione’s

⁶All of these statements are listed as Statements 1–34 in the District Attorney’s CPL § 710.30(1) notice.

grabbable area.

50. The Fourth Amendment protects individuals from unreasonable searches and seizures by the government. U.S. Const. amend. IV. Building on the Fourth Amendment's protections, the New York Court of Appeals has ruled that "[a]ll warrantless searches presumptively are unreasonable per se, and, thus, where a warrant has not been obtained, it is the People who have the burden of overcoming this presumption of unreasonableness." *People v. Jimenez*, 22 N.Y.3d 717, 721 (2014) (quotations and alterations omitted).

51. While New York courts have accepted a search conducted by law enforcement "incident to a lawful arrest" as an exception to the warrant requirement, the prosecutors must first satisfy two separate requirements: "The first imposes spatial and temporal limitations to ensure that the search is not significantly divorced in time or place from the arrest. The second, and equally important, predicate requires the People to demonstrate the presence of exigent circumstances." *Jimenez*, 22 N.Y.3d at 721–22; *see also People v. Gokey*, 60 N.Y.2d 309, 312 (1983) ("Under the State Constitution, an individual's right of privacy in his or her effects dictates that a warrantless search incident to arrest be deemed unreasonable unless justified by the presence of exigent circumstances.").

52. The exigent circumstances requirement for searches incident to a lawful arrest specifically applies when law enforcement searches closed containers. *Jimenez*, 22 N.Y.3d at 719 ("In the context of warrantless searches of closed containers incident to arrest, the People bear the burden of demonstrating the presence of exigent circumstances in order to invoke this exception to the warrant requirement."). When addressing the exigency requirement for a warrantless search incident to a lawful arrest of property within the defendant's "immediate control" or "grabbable area," the Court of Appeals has recognized "two interests that may justify the warrantless search

of that property incident to a lawful arrest: the safety of the public and the arresting officer; and the protection of evidence from destruction or concealment.” *Gokey*, 60 N.Y.2d at 312; *People v. Morales*, 126 A.D.3d 43, 45 (1st Dep’t 2015) (“The Court of Appeals has recognized two interests underlying the exigency requirement: the safety of the public and the arresting officer, and the protection of evidence from destruction or concealment.”); *People v. Julio*, 245 A.D.2d 158, 158 (1st Dep’t 1997) (“A bag that is within the immediate control or grabbable area of a suspect at the time of his arrest may not be subjected to a warrantless search incident to arrest unless the circumstances leading to the arrest support a reasonable belief that the suspect may gain possession of a weapon or be able to destroy evidence.”).

53. Nevertheless, because the search incident to a lawful arrest exception to the warrant rule requires exigency,

a container may not be searched for a weapon or evidence if it is apparent that it is so securely fastened that the person arrested cannot quickly reach its contents or the person arrested makes unmistakably clear that he will not seek to reach the contents or the container is so small that it could not contain a weapon or evidence of the crime.

People v. Smith, 59 N.Y.2d 454, 458 (1983) (citations omitted) (ruling that the police did not need a warrant where, “[a]t the time of arrest defendant was holding the briefcase in his hand; its contents were, therefore, readily accessible to him and it was of sufficient size to contain a weapon.”).

54. Similarly, “even a bag within the immediate control or grabbable area of a suspect at the time of his arrest may not be subjected to a warrantless search incident to the arrest, unless the circumstances leading to the arrest support a reasonable belief that the suspect may gain possession of a weapon or be able to destroy evidence located in the bag.” *People v. Jimenez*, 22 N.Y.3d at 722; *People v. Washington*, 171 A.D.3d 458, 459 (1st Dep’t 2019) (“We find that the

trial court should have suppressed the 12 inch knife recovered by the police during a warrantless search of defendant's bag. Although at the time of the search the bag was on the floor within the 'grabbable area' next to defendant, he was standing with his arms handcuffed behind his back. These circumstances do not support a reasonable belief that the defendant could have either gained possession of a weapon or destroyed evidence located in the bag." (internal *Gokey* citation omitted)); *People v. Houston*, 143 A.D.3d 737, 738–39 (2d Dep't 2016) (suppressing evidence recovered from the warrantless search of the defendant's briefcase that he placed on a parked car when he surrendered because, even though the police had found a loaded gun on the defendant's jacket pocket when they arrested him, the police failed to establish exigent circumstances to search the brief case).⁷

55. Moreover, a search incident to a lawful arrest is not justified, and suppression is proper, when the defendant's backpack is "not within the defendant's immediate control or grabbable area at the time he was arrested." See, e.g., *People v. Thompson*, 118 A.D.3d 922, 924 (2d Dep't 2014) (suppressing a semi-automatic gun recovered from the defendant's backpack because the search "was not justified as a search incident to a lawful arrest," as the "backpack was not within the defendant's immediate control or 'grabbable area' at the time he was arrested"); *People v. Diaz*, 107 A.D.3d 401, 401 (1st Dep't 2013) (warrantless search of the defendant's backpack was unlawful because the defendant was handcuffed at the time of the search and it was

⁷*Cf. People v. Velez*, 154 A.D.3d 527, 528 (1st Dep't 2017) (finding exigent circumstances to search the defendant's wallet even though the defendant was handcuffed because the wallet "was within his grabbable area and had not been reduced to the exclusive control of the police" and because "the officers had reason to suspect that [the wallet] might contain a weapon, because defendant had been arrested for robbery, a violent crime, and the officers had already recovered one razor blade from defendant."); *In re Michael H.*, 161 A.D.3d 459, 460 (1st Dep't 2018) (denying suppression where "the bag was in appellant's grabbable area, and the police opened the bag almost simultaneously with handcuffing appellant.").

no longer in his control); *People v. Julio*, 245 A.D.2d 158, 158 (1st Dep't 1997) (warrantless search of the defendant's bag was unlawful where it was in the exclusive control of the police and the defendant was unable to reach it because he was handcuffed and surrounded by police officers;).⁸

56. *People v. Morales*, 126 A.D.3d 43 (1st Dep't 2015) is particularly instructive. There, the police responded to a 911 call of a suspicious man inside a restaurant who appeared to be trying to steal from women's purses. After exiting the restaurant with the police, the defendant placed both of his hands in his jacket pockets, leading to a struggle between the officers and the defendant when the defendant refused to remove his hands from his jacket pockets. The seven officers at the scene subdued the defendant, handcuffed him and placed him in a police car. While the defendant sat handcuffed in the back seat, officers searched his jacket that had fallen onto the trunk of the police car during the altercation and found drugs and a box cutter.

57. In reversing the lower court and dismissing the indictment, the First Department found that "at the time of the search, the jacket was not within defendant's grabbable area, and

⁸As a general rule, suppression issues are governed by the law of the forum state, in this case New York. *See, e.g., People v. Espinal*, 161 A.D.3d 556, 557 (1st Dep't 2018) ("We find it unnecessary to decide any questions of New Jersey search and seizure law, because we find that New York law governs the issues raised here. Suppression issues, including those arising out of a defendant's constitutional rights, are generally governed by the law of the forum, and New York has a paramount interest in the application of its laws to this case." (quotation omitted)). Nevertheless, even under Pennsylvania law, a search incident to arrest only allows arresting officers to search the person arrested and "the area within his immediate control." *See, e.g., Commonwealth v. Williams*, 305 A.3d 89, 97 (Pa. Super. 2023) ("The search incident to arrest exception allows arresting officers, in order to prevent the arrestee from obtaining a weapon or destroying evidence, to search both the person arrested and the area within his immediate control." (citation and quotation omitted)); *Commonwealth v. Wright*, 742 A.2d 661, 665 (1999) ("A warrantless search incident to an arrest is valid 'only if it is substantially contemporaneous with the arrest and confined to the immediate vicinity of the arrest.'" (quoting *Shipley v. California*, 395 U.S. 818, 819 (1969)). While "[t]he parameters of a search incident to arrest includes containers and clothing," it is limited to containers and clothing "that are in the arrestee's possession at the time of his arrest." *Commonwealth v. Williams*, 305 A.3d at 97. Because Mr. Mangione did not have possession of his backpack at the time of this arrest, law enforcement's warrantless search cannot be justified as a search incident to a lawful arrest under Pennsylvania law.

there were no exigent circumstances justifying a warrantless search of the jacket incident to arrest.” *Id.* at 44. While the defendant had struggled with the police earlier, the First Department noted that the defendant was subdued at the time of the search and that “the scene at the time of the search was police-controlled. *Id.* at 47.

58. Notably, in suppressing the evidence, the First Department rejected the dissenting judge’s argument that the search “was justified because the jacket may have contained a loaded gun that would endanger the police and the public” because, “even if there had been a legitimate concern, at some earlier time during the encounter between defendant and the police, that defendant might retrieve a weapon from the jacket, that possibility no longer existed at the time the police conducted the search.” *Id.* at 48. The First Department further noted how the dissent’s argument was not consistent with New York case law:

Taken to its logical conclusion, the dissent is arguing that an exigency that may have existed earlier in the encounter allowed the police to search the jacket, even where the jacket was in the exclusive control of the police. That view, if accepted, would run afoul of Court of Appeals jurisprudence and would eviscerate the grabbable area doctrine.

Id.; *see also id.* at 48–49 (“The dissent would extend this doctrine and hold that whenever there is the possible presence of a weapon, the police can search a container to protect themselves, even if it is nowhere near the suspect’s grabbable reach. Such a conclusion finds no support in this state’s jurisprudence on searches incident to arrest.”).

2. There Were No Exigent Circumstances Allowing Law Enforcement to Search Mr. Mangione’s Backpack Without a Search Warrant

59. There can be no disagreement that, at the time law enforcement started searching Mr. Mangione’s backpack, he was in handcuffs and surrounded by police officers while the bag was approximately six feet away from him. Moreover, even before Mr. Mangione’s arrest, the backpack was not within his immediate control or grabbable area because Patrolman Detwiler had

quickly moved it to another table approximately six feet away, roughly nine minutes earlier, and there was a human wall of police officers strategically standing between Mr. Mangione and the backpack. In addition, even before the arrest, the scene was police-controlled as there were ten or more officers in the back of the McDonald's. Nevertheless, despite the lack of any exigency, officers began searching through his backpack while inside McDonalds. There was certainly no exigency once Mr. Mangione was removed from McDonald's, yet law enforcement continued to search the backpack in the restaurant without a warrant. Under New York law, this search was illegal and the contents of the backpack must be suppressed.

60. The fact that they believed that Mr. Mangione was the person wanted for murder does not change the analysis nor provide the necessary exigency to overcome this fatal police error. First, the shooting happened five days earlier and the police had no reason to believe that the alleged shooter was still armed. Second, even if the police had reason to believe he may be armed, any exigency disappeared after Patrolman Detwiler frisked Mr. Mangione for weapons, moved the bag six feet away and had armed officers strategically placed between Mr. Mangione and the backpack. The exigency was certainly removed once Mr. Mangione was handcuffed and surrounded by officers. *See Morales*, 126 A.D.3d at 48 (“We fail to grasp the logic of the dissent’s position that any such danger did not disappear simply because defendant had been subdued. In fact, it *did* disappear—defendant was locked in the police car, and the jacket was on the trunk. Once defendant was safely separated from the jacket, the record does not show that any harm could have resulted from the possible presence of a weapon.”).

61. Furthermore, there certainly was no exigency once Mr. Mangione was removed from McDonald's or once Patrolwoman Wasser brought the backpack to the precinct. By continuing to search the backpack even outside Mr. Mangione's presence, the police underscored

that the search had nothing to do with exigency and were simply searching for incriminating evidence.

62. While Patrolwoman Wasser claimed that she was searching the backpack to make sure there was no bomb inside, this post hoc excuse did not reflect any legitimate exigency. First, nothing about the alleged shooting in New York or law enforcement's interactions with Mr. Mangione in the McDonald's provided a reasonable basis to believe that there was a bomb in the backpack. Second, the patrolwoman did not make this claim until after she had already been searching through the backpack and after she recovered a loaded magazine. Tellingly, she stopped searching the backpack at the McDonald's once she recovered the loaded magazine. If one were legitimately concerned about a bomb, one would have either continued searching right then and there or cleared the McDonalds and have called in and waited for the bomb squad to arrive before searching the bag, neither of which occurred. Certainly, one would not have continued searching the bag in a McDonald's filled with officers, employees and customers or put the bag in their car to transport the potential bomb to the precinct. Third, that an officer sliced open a small taped up cardboard container, too small to house a bomb, is further evidence that this was a warrantless search for evidence rather than a legitimate concern about a bomb. Fourth, this police theory claiming exigency, without more, would render all high-profile murder cases exigent by this standard as there is always the theoretical possibility of a bomb inside a closed backpack. Under New York law, however, "exigency is not demonstrated unless it is supported by circumstances giving rise to an objectively reasonable suspicion." *See, e.g., People v. Diaz*, 107 A.D.3d 401, 402 (1st Dep't 2013).

63. Rather, all these circumstances demonstrate that Patrolwoman Wasser did not search the bag because she reasonably thought there might be a bomb, but rather this was an excuse

designed to cover up an illegal warrantless search of the backpack. This made-up bomb claim further shows that even she believed at the time that there were constitutional issues with her search forcing her to attempt to salvage this debacle by making this spurious claim.

64. Nor can the search be justified as an inventory search. As the Court of Appeals has noted: “An inventory search is exactly what its name suggests, a search designed to properly catalogue the contents of the item searched.” *People v. Johnson*, 1 N.Y.3d 252, 256 (2003). Here, the officers were not inventorying or cataloging the contents of the backpack at McDonalds. That is clear from the fact that the officers did not write down what they were removing from the backpack, coupled with the fact that officers put the loaded gun magazine back in the backpack once they found it and stopped searching altogether. *See id.* at 256 (“[I]t can hardly be said that the officer in this case followed the policy [for an inventory search] by conducting a search that included only the glove compartment, and upon finding a gun, leaving it in place.”).

65. What the officers were doing instead was rummaging through the backpack looking for evidence. Such conduct is not a proper inventory search and is prohibited by the Supreme Court and New York law. *See, e.g., Florida v. Wells*, 495 U.S. 1, 4 (1990) (“[A]n inventory search must not be a ruse for a general rummaging in order to discover incriminating evidence. The policy or practice governing inventory searches should be designed to produce an inventory. The individual police officer must not be allowed so much latitude that inventory searches are turned into ‘a purposeful and general means of discovering evidence of crime.’”); *Johnson*, 1 N.Y.3d 252 (“As the Supreme Court has stated, ‘an inventory search must not be a ruse for a general rummaging in order to discover incriminating evidence.’” (quoting *Florida v. Wells*, 495 U.S. 1, 4 (1990))).

66. Because the officers had no basis for their warrantless search, the recovered evidence must be suppressed.

3. The Illegally Obtained Evidence Recovered from Mr. Mangione's Backpack is Not Admissible Under the Doctrine of Inevitable Discovery

67. As the warrantless search was illegal, the District Attorney has no basis to claim that the recovered evidence should nevertheless not be suppressed because the evidence would have been inevitably discovered when the police conducted an inventory search of the backpack at the precinct. In New York, the Court of Appeals has established that the doctrine of inevitable discovery does not apply “where, as here, the evidence sought to be suppressed is the very evidence obtained in the illegal search” because

[p]ermitting its admission in evidence effects what amounts to an after-the-fact purging of the initial wrongful conduct, and it can never be claimed that a lapse of time or the occurrence of intervening events has attenuated the connection between the evidence ultimately acquired and the initial misconduct. The illegal conduct and the seizure of the evidence are one and the same.

People v. Stith, 69 N.Y.2d 313, 318 (1987). The Court of Appeals further noted that admitting illegally obtained evidence through the inevitable discovery rule “what would amount to a *post hoc* rationalization of the initial wrong,” “would be an unacceptable dilution of the exclusionary rule” and “would defeat a primary purpose of that rule, deterrence of police misconduct.” *Id.* at 319. Additionally, “failing to exclude wrongfully obtained primary evidence ‘would encourage unlawful searches in the hope that probable cause would be developed after the fact.’” *Id.* (quoting the Oregon Court of Appeals in *State v Crossen*, 21 Or. App. 835, 838 (1975)).

68. Consequently, because the doctrine of inevitable discovery is inapplicable to “primary evidence,” (*i.e.*, “the very evidence obtained in the illegal search”), there is no basis to admit the illegally seized evidence from Mr. Mangione’s backpack. *See, e.g., People v. Stith*, 69 N.Y.2d at 318; *People v. Julio*, 245 A.D.2d 158, 159 (1st Dep’t 1997) (“The People’s alternative argument, that evidence of the gun should be admitted under the inventory exception, ignores the fact that the exception is only applicable to secondary evidence. It is inapplicable in the

circumstances at bar where the evidence of the gun is ‘primary’ evidence, i.e. ‘the very evidence obtained in the illegal search.’ The likelihood that the gun would have been discovered during an inventory search at the police station, therefore, does not vitiate an illegal search and seizure. Since the search of the bag was unlawful, the evidence of the gun must be suppressed.” (citation omitted)).

4. Mr. Mangione has Standing to Challenge the Illegal Search of his Backpack

69. Because this backpack was in Mr. Mangione’s possession when stopped by the police at McDonalds (as shown on the body-worn camera footage), Mr. Mangione had a reasonable expectation of privacy in his closed backpack and standing to challenge the unlawful police search. *See, e.g., People v. Burton*, 6 N.Y.3d 584, 587–88 (2006) (“Standing exists where a defendant was aggrieved by a search of a place or object in which he or she had a legitimate expectation of privacy. This burden is satisfied if the accused subjectively manifested an expectation of privacy with respect to the location or item searched that society recognizes to be objectively reasonable under the circumstances.” (citation omitted)).

70. Additionally, Mr. Mangione also has standing to challenge the search of his backpack by relying on the District Attorney’s allegations and evidence that the backpack and its contents belong to Mr. Mangione (*see* GJ Tr. at 148 (“I moved on with Officer Wasser to search his backpack on an adjacent table.”); 156 (“The backpack that Mr. Mangione had on him.”). *See, e.g., People v. Ramirez-Portoreal*, 88 N.Y.2d 99, 109 (1996) (“In sum, standing to seek suppression of evidence requires the defendant to establish, by defendant’s own evidence or by relying on the People’s evidence that he or she had a legitimate expectation of privacy in the place or item that was searched.” (citation omitted)).

71. For these reasons, this Court must suppress all evidence obtained from the

backpack—including but not limited to the gun, the silencer and Mr. Mangione’s alleged writings, electronic devices —and any evidence obtained as the fruit of the illegally-obtained evidence.

72. In the alternative, this Court should conduct a hearing, pursuant to *Mapp v. Ohio*, 367 U.S. 643 (1961), to determine the admissibility of this evidence after considering the appropriateness of law enforcement’s conduct.

C. THE DISTRICT ATTORNEY’S OFFICE SHOULD BE PRECLUDED FROM ELICITING LAY NON-EYEWITNESS IDENTIFICATION TESTIMONY AT TRIAL

73. The District Attorney’s Office has notified counsel that it intends to offer three law enforcement witnesses at trial to make an in-court identification of Mr. Mangione. For these three witnesses (NYPD Detective Oscar Diaz, Patrolman Joseph Detwiler and Patrolman Frye), the in-court identification will be grounded on “an identification of the defendant from video surveillance, based on said individual’s familiarity with the defendant.” Penal Law § 710.30 Notice at p. 17.⁹

74. The District Attorney’s Office cites to *People v. Coleman*, 78 A.D.3d 457, 458 (1st Dep’t 2010) in support of its proposed in-court identification by law enforcement witnesses. The prosecutors’ reliance on this case is misplaced, however, as the *Coleman* court ruled that the lower court erred in admitting testimony from two police officers and the defendant’s aunt to establish that the defendant was the individual depicted on surveillance video of the alleged incident.

⁹While the District Attorney’s Office provided notice for these three law enforcement officers, the prosecutors did not provide any such notice for Sergeant Michael Horan from the San Francisco Police Department, who contacted the FBI after observing a resemblance between the suspect from the New York City incident and the photos on Mr. Mangione’s social media. News Release, San Francisco Police Department, *SVU Sgt. Michael Horan Recognized for Identifying a High-Profile Murder Suspect 25-01*, (January 30, 2025), <https://www.sanfranciscopolice.org/news/svu-sgt-michael-horan-recognized-identifying-high-profile>. Should the District Attorney’s Office seek for Sergeant Horan to make an in-court identification of Mr. Mangione, we request that they provide formal notice and discovery related to this identification.

Coleman, 78 A.D.3d at 458. In finding this evidence improper, the First Department noted that, while

a lay witness may offer an opinion about the identity of a person captured in a photograph or videotape to aid the jury in cases where the witness is more likely to correctly identify the [person] . . . than is the jury . . . [s]uch testimony is most commonly allowed in cases where the defendant has changed his or her appearance since being photographed or taped, and the witness knew the defendant before that change of appearance.

Id. (quotations and citations omitted). Because the prosecutors never claimed that the defendant altered his appearance and there were “no other circumstances suggest[ing] that the jury, which had ample opportunity to view defendant, would be any less able than the witnesses to determine whether he was seen in the videotape,” the court ruled that the evidence should not have been admitted. *Id.* at 458.

75. This issue was also recently addressed by the New York Court of Appeals in *People v. Mosley*, 41 N.Y.3d 640 (2024), where the court ruled that the trial court abused its discretion by admitting a police officer’s testimony identifying the defendant as the shooter in camera footage.

The Court of Appeals framed the issue as follows:

This case concerns an increasingly prevalent issue: when may someone who is not an eyewitness to a crime testify to a jury that the defendant is the person depicted in a photo or video. We hold that such testimony may be admitted where the witness is sufficiently familiar with the defendant that their testimony would be reliable, and there is reason to believe the jury might require such assistance in making its independent assessment. Here, there was no showing that the proffered witness was sufficiently familiar with the defendant to render his testimony helpful, or that the jury faced an obstacle to making the identification that the witness’s testimony would have overcome.

Id. at 642–43.

76. The facts in Mr. Mangione’s case demand the same result. Here, the proposed witnesses are not eyewitnesses to the crime. Moreover, the witnesses had no interactions with Mr. Mangione prior to the video surveillance to make them “sufficiently familiar” with Mr. Mangione.

See id. at 648 (noting that courts “may also take into account whether the witness was familiar with the defendant’s appearance at the time the surveillance footage was taken”). Additionally, there is no allegation that Mr. Mangione altered his appearance after the alleged shooting and there is no reason to believe that the jury would need any assistance in making its own assessment of the video surveillance footage. Accordingly, the District Attorney should be precluded from seeking an in-court identification of Mr. Mangione where the witness’ identification is based on viewing video surveillance. Moreover, based on *Mosley*, the District Attorney’s witnesses should also be precluded from testifying that Mr. Mangione is the individual depicted in a photo or video.

77. In the alternative, this Court should conduct a *Mosley* hearing to determine the admissibility of the proposed lay non-eyewitness identification testimony. *Id.* at 650 (“[W]e note that before admitting lay non-eyewitness identification testimony, a court should inquire as to the basis of the witness’s familiarity outside the presence of the jury in a separate hearing or voir dire, as the court properly did here. The party offering the witness—in most cases the People—bears the burden of establishing that their testimony would both be helpful and necessary.”).

D. THE INDICTMENT’S FIRST-DEGREE MURDER CHARGE (COUNT ONE) AND SECOND-DEGREE MURDER AS A CRIME OF TERRORISM CHARGE (COUNT TWO) MUST BE DISMISSED BECAUSE THE GRAND JURY EVIDENCE FAILS TO ESTABLISH INTENT TO INTIMIDATE OR COERCE A CIVILIAN POPULATION AS REQUIRED BY STATUTE

1. Applying New York’s Terrorism Statute to This Case Would Impermissibly Trivialize and Redefine the Legislature’s Definition of Terrorism

78. In the weeks after and because of the September 11, 2001, terror attack on New York City, New York state passed its first ever state terrorism law in response—the Anti-Terrorism Act of 2001, passed six days after the attack in a special session of the state legislature. By enacting this law, the New York Legislature looked to strengthen New York law to ensure that “terrorists .

. . are prosecuted and punished in state courts with appropriate severity.” *People v. Morales*, 20 N.Y.3d 240, 249 (2012). The legislative history, and the context within which this law was passed demonstrates that this law was only intended to apply to a very narrow category of the most serious offenses and only when they meet certain criteria similar to the following terrorist attacks:

(1) the September 11, 2001 attacks on the World Trade Center and the Pentagon; (2) the bombings of American embassies in Kenya and Tanzania in 1998; (3) the destruction of the Oklahoma City federal office building in 1995; (4) the mid-air bombing of Pan Am Flight number 103 in Lockerbie, Scotland in 1988; (5) the 1997 shooting from atop the Empire State Building; (6) the 1994 murder of Ari Halberstam on the Brooklyn Bridge; and (7) the bombing at the World Trade Center in 1993.

(*Id.*; see also Penal Law § 490.00).

79. The New York Court of Appeals has cautioned against the improper use of this powerful tool, warning that “the concept of terrorism has a unique meaning and its implications risk being trivialized if the terminology is applied loosely in situations that do not match our collective understanding of what constitutes a terrorist act.” *People v. Morales*, 20 N.Y.3d 240, 249 (2012) (emphasis added).

80. This warning was ignored by the District Attorney’s Office when they indicted Mr. Mangione for first-degree murder under the theory that the victim was “killed in furtherance of an act of terrorism” (Penal Law § 125.27(1)(a)(xiii)), as well as second-degree murder as a crime of terrorism (Penal Law §§ 125.25(1), 490.25), despite there being absolutely no facts to support this theory.

81. To seek these enhanced charges, the District Attorney’s Office alleges that Mr. Mangione’s actions meet the terrorism standard under Penal Law § 490.05(1)(b) (see Count One first-degree murder charge) and Penal Law § 490.25(1) (see Count Two second-degree murder charge) because his actions “were intended to intimidate or coerce a civilian population, influence

the policies of a unit of government by intimidation or coercion, and affect the conduct of a unit of government by murder, assassination or kidnapping.”

82. This is not the first time a prosecutor’s office has tried to fit the square peg of murder into the round hole of terrorism. *People v. Morales* is one example of such prosecutorial overreach. In that case, the defendant was an alleged gang member who shot numerous times at a rival gang member, paralyzing the rival but hitting and killing a ten-year-old girl. *Morales*, 20 N.Y.3d at 245. The Bronx County District Attorney’s Office indicted the defendant on 70 counts, including several crimes that relied on New York’s terrorism statute. In support of the terrorism charges, the prosecutor’s claimed that the goal of the defendant’s gang was “to be the most feared Mexican gang in the Bronx,” and that the defendant’s actions were intended to “intimidate or coerce all Mexican-Americans in the pertinent geographical area.” *Id.* at 244, 246. The defendant was convicted of several crimes, including three crimes that relied on the terrorism statute. The defendant appealed his conviction, and the Appellate Division, First Department, found that there was insufficient evidence proving that the defendant intended to intimidate or coerce a civilian population because the evidence “established that defendant only engaged in gang-related street crimes, not terrorist acts.” *Id.* at 246.

83. On appeal, the Court of Appeals started its analysis by noting that the terrorism statute failed to define the phrase “intent to intimidate or coerce a civilian population.” The court noted, however, that it was not necessary to define the term “civilian population” to resolve the case because, *inter alia*, even if the evidence established that one of the defendant’s goals was to intimidate or coerce the rival gang, “there is no indication that the legislature enacted article 490 of the Penal Law with the intention of elevating gang-on-gang street violence to the status of terrorism as that concept is commonly understood.” *Id.* at 248. The Court of Appeals further noted:

the statutory language cannot be interpreted so broadly so as to cover individuals or groups who are not normally viewed as “terrorists” and the legislative findings in section 490.00 clearly demonstrate that the legislature was not extending the reach of the new statute to crimes of this nature . . . [as] apparent in the examples of terrorism cited in the legislative findings.”

Id. (citation omitted); *see also id.* at 249 (“Because the legislature was aware of the difficulty in defining or categorizing specific acts of terrorism, it incorporated a general definition of the crime and referenced seven notorious acts of terrorism that serve as guideposts for determining whether a future incident qualifies for this nefarious designation.” (citations omitted)). Finding the defendant’s conduct did not meet the criteria for terrorism enumerated by the legislature, the Court of Appeals ruled that the terrorism statute did not apply to the shooting.

84. Other courts have followed suit. *See, e.g., Matter of Jaydin R.*, 190 A.D.3d 745, 745 (2d Dep’t 2021) (finding that the terrorism statute did not apply where a student threatened the victim, another student, that the victim would be chopped up in somebody’s backyard” and that the student was “going to get a white person to shoot up the school” because there was no evidence that the student intended to intimidate or coerce a civilian population); *People v. DeBlasio*, 190 A.D.3d 595, 595 (1st Dep’t 2021) (finding the terrorism statute did not apply where the defendant, a Muslim, threatened to shoot “you guys”—referring to several Bangladeshi worshippers at defendant’s mosque after an altercation—as there was no evidence that the defendant intended to intimidate or coerce a civilian population because “the threat mentioned no group or population and instead appears to have been based on a personal dispute defendant had with one or more of his fellow worshippers over money or a missing phone.”).

85. When viewed in this context, the New York Legislature did not intend for the crime of terrorism to include Mr. Mangione’s alleged conduct—a shooting directed at a single individual—as the terrorism examples the legislature referenced were attacks on multiple civilians:

- The September 11, 2001, attacks killed 2,977 people (2,753 at the World Trade Center and 184 at the Pentagon) and injured thousands;
- The 1998 embassy bombings killed 224 people (including 12 Americans) and injured thousands;
- The Oklahoma City bombing killed 168 people (including 19 children) and injured hundreds;
- The Lockerbie, Scotland bombing killed 270 people (including 190 Americans);
- The 1997 Empire State Building shooting killed 1 and injured 6 others;
- The 1994 Brooklyn Bridge shooting targeted 15, killed 1 and injured three; and
- The 1993 World Trade Center bombing killed 6 and injured hundreds.

86. Because the alleged conduct here does not meet the legislature's use of the term "terrorism," Counts One and Two that rely on the terrorism statute must be dismissed.

2. The Grand Jury Evidence Failed to Establish that Mr. Mangione Intended to Intimidate or Coerce a Civilian Population

87. In addition to not fitting the legislature's terrorism profile, there is also no credible evidence before the Grand Jury supporting the use of the terrorism statute. Penal Law §§ 490.05(1)(b), 490.25(1) define an "Act of terrorism" as an act that is intended to (i) intimidate or coerce a civilian population; (ii) influence the policies of a unit of government by intimidation or coercion; or (iii) affect the conduct of a unit of government by murder, assassination or kidnapping. Although the language in Counts One and Two of the indictment list all three theories, there was no evidence presented to the grand jury demonstrating that Mr. Mangione's actions were intended to "influence the policies of a unit of government by intimidation or coercion" or "affect the conduct of a unit of government by murder, assassination or kidnapping"—as Brian Thompson was not part of any governmental unit.

88. The only remaining theory therefore is that Mr. Mangione intended to “intimidate or coerce a civilian population,” but even that theory is not supported by the grand jury evidence. The only reference to a civilian population in the grand jury is the testimony of a UnitedHealthcare employee (referred to as Person #93 in the discovery), who referred to UnitedHealthcare employees as “civilians.”¹⁰ As an initial matter, the term “civilian population” cannot be read so broadly in the terrorism statute to include the roughly 400,000 UnitedHealthcare employees around the country. After all, as noted above, the legislative findings surrounding New York’s terrorism statute demonstrate that the statute was intended to address terrorist acts similar to the acts listed by the legislature. As noted by the First Department in its *Morales* opinion:

it suffices to observe that the term “to intimidate or coerce a civilian population,” in the context of the aforementioned legislative findings, implies an intention to create a pervasively terrorizing effect on people living in a given area, directed either to all residents of the area or to all residents of the area who are members of some broadly defined class, such as a gender, race, nationality, ethnicity, or religion.

People v. Morales, 86 A.D.3d 147, 157 (1st Dep’t 2011), *aff’d in part, rev’d in part*, 20 N.Y.3d 240 (2012) (noting that the “intention by a gang member to intimidate members of rival gangs, when not accompanied by an intention to send an intimidating or coercive message to the broader community, does not, in our view, meet the statutory standard”). These defined classes—gender, race, nationality, ethnicity, religion or the like—were not meant to include employees of a health insurance company.

89. In other words, while the term “civilian population” in the context of the terrorism statutes may include the general population in a given area or specific identifiable segments of the population (such as gender, race, nationality, ethnicity, religion) in a given area, it was not meant

¹⁰ The defense has not been provided with the full grand jury transcripts, thus our arguments are based on the transcripts provided.

to include every potential group of individuals who have something in common.

90. Moreover, although the Court of Appeals noted that the term “civilian population” could “[c]onceivably . . . range from the residents of a single apartment building to a neighborhood, city, county, state or even a country” (*Morales*, 20 N.Y.3d at 247), it does not follow that the Court of Appeals endorses the view that any group of individuals—no matter how broadly defined—would constitute a “civilian population” under the terrorism statute. In fact, the Court of Appeals warned what would happen if prosecutors sought to broadly define the term:

If we were to apply a broad definition to “intent to intimidate or coerce a civilian population,” the People could invoke the specter of “terrorism” every time a Blood assaults a Crip or an organized crime family orchestrates the murder of a rival syndicate’s soldier. But the concept of terrorism has a unique meaning and its implications risk being trivialized if the terminology is applied loosely in situations that do not match our collective understanding of what constitutes a terrorist act. History and experience have shown that it is impossible for us to anticipate every conceivable manner in which evil schemes can threaten our society. Because the legislature was aware of the difficulty in defining or categorizing specific acts of terrorism, it incorporated a general definition of the crime and referenced seven notorious acts of terrorism that serve as guideposts for determining whether a future incident qualifies for this nefarious designation.

Id. at 249 (citations omitted).

91. Even assuming the term “civilian population” could include UnitedHealthcare employees, the grand jury evidence was still insufficient to support the terrorism charges in the indictment. Person #93 testified that UnitedHealthcare workers received threats after the December 4th shooting, that some employees were afraid and that the company told its employees not to publicly wear clothing with the company’s logo (GJ Tr. at 383–400).¹¹ This testimony,

¹¹The District Attorney’s Office withheld this grand jury testimony from the defense until April 10, 2025. The only redactions to the testimony was the removal of the witness’ name and the identity of other individuals mentioned in the witness’ testimony. This is the same exact protective measure the District Attorney did when providing police reports to the defense on March 10, 2025. There was no legitimate reason to withhold this evidence for another month (although there are

however, has no relevance on the element of whether Mr. Mangione **intended** to intimidate or coerce a civilian population. This evidence only shows how others, including UnitedHealthcare itself and its employees, responded to the shooting; it does not provide any insight into what Mr. Mangione himself intended, which is a necessary element of the terrorism statute. Additionally, this evidence fails to consider, as was presented to the grand jury (GJ Tr. at 398–400), that UnitedHealthcare and its employees had received threats prior to December 4, 2024.

92. The District Attorney also seems to rely on Mr. Mangione’s alleged writings to establish his intent to intimidate or coerce a civilian population. Notably, as none of the alleged writings referenced any other UnitedHealthcare employees—the only “civilian population” referenced in the grand jury—these writings do not establish the necessary element that Mr. Mangione intended to intimidate or coerce a civilian population.

93. Moreover, these alleged writings make clear that Mr. Mangione was not looking to terrorize any community. (*See, e.g.*, GJ Tr. at 451–52 (noting that Ted Kaczynski was a “monster” and “terrorist, the worst thing a person can be” by “indiscriminately mail bomb[ing] innocents”); *id.* (“Bombs equal terrorism” because it “recklessly endanger[s] countless employees.”)) As such, these writings cannot be the basis to support a finding that he intended to intimidate or coerce a civilian population; in fact, they support just the opposite.

94. Additionally, because these alleged writings were never released by Mr. Mangione to the public, nor were they intended to be, these private writings do not support the allegation that Mr. Mangione intended to intimidate or coerce a civilian population. *Cf. People v. Allen*, 66 Misc. 3d 913, 916 (N.Y. Co. Ct. 2020) (“While a private conversation between teenage friends, without more, may not establish the element of intent to intimidate a civilian population . . . the instant

several illegitimate reasons), while, at the same time, pushing for defense counsel to file pretrial motions challenging the grand jury evidence without this testimony.

case does not qualify as a private conversation.” (footnote omitted)). Rather, by selectively releasing these writings to the public and affixing the term “manifesto”—a law enforcement term, not one ever used by Mr. Mangione—law enforcement is responsible for causing the very public intimidation or coercion they are now trying to attribute to Mr. Mangione, which is the basis for charging him with enhanced terror-related charges.

95. Notably, “manifesto” is defined by *Merriam-Webster* as “a written statement declaring *publicly* the intentions, motives, or views of its issuer.” (Emphasis added).¹² There is absolutely no evidence that Mr. Mangione ever either publicly released or intended to release the writings that law enforcement attribute to him.¹³ Therefore, the only ones who ever published the writings were law enforcement; similarly, Mr. Mangione never called these writings a manifesto, as this a term was first coined by law enforcement to characterize the writings with a phrase synonymous with terrorism in order to prejudice Mr. Mangione.

96. Furthermore, to the extent the District Attorney seeks to support the terrorism-related charges by arguing that Mr. Mangione allegedly inscribed the words “DENY,” DELAY” and “DEPOSE” on bullets recovered at the scene, these facts do not demonstrate that Mr. Mangione intended to intimidate or coerce UnitedHealthcare employees—the only civilian population referenced in the grand jury—or anyone else for that matter

97. Notably, law enforcement announced that these words were inscribed on the bullets, not Mr. Mangione. If Mr. Mangione intended to intimidate or coerce a civilian population,

¹²Definition of *MANIFESTO*, Merriam-Webster (Mar. 17, 2025), <https://www.merriam-webster.com/dictionary/manifesto>.

¹³In stark contrast, for example, Ted Kaczynski (the Unabomber) threatened to continue his bombing campaign unless his manifesto was widely circulated. Ultimately, because of Kaczynski’s continuing terrorist conduct, *The Washington Post* printed his manifesto in September 1995 after receiving authorization from then Attorney General Janet Reno.

he would have publicly disseminated that he had written these words on the bullets but he never did; instead, as with Mr. Mangione's alleged writings, law enforcement strategically leaked this information to the public causing any fear they are attempting to attribute to Mr. Mangione.

98. It is worth noting what this case would have looked like without law enforcement purposefully leaking information to the press and social media. This would have been an alleged murder of a man outside a hotel. Instead, the police leaked what was written on the bullets; the police leaked Mr. Mangione's alleged writings; and the police called these alleged writings a manifesto—a term synonymous with terrorism. None of this was done by Mr. Mangione. It was law enforcement that created the air of terrorism surrounding this alleged crime and who now seek to blame Mr. Mangione for the hysteria and fear they created.¹⁴

99. Without sufficient evidence that Mr. Mangione's actions were intended to intimidate or coerce a civilian population, influence the policies of a unit of government by intimidation or coercion or affect the conduct of a unit of government by murder, assassination or kidnapping, this Court must dismiss Counts One and Two of the indictment.

E. THE CONCURRENT STATE AND FEDERAL PROSECUTIONS VIOLATE THE DOUBLE JEOPARDY CLAUSE AND MR. MANGIONE'S CONSTITUTIONAL RIGHTS BECAUSE THE PROSECUTIONS HAVE CONFLICTING THEORIES, AND MR. MANGIONE'S DEFENSE OF ONE PROSECUTION COULD POTENTIALLY BE USED AGAINST HIM IN THE OTHER PROSECUTION IN VIOLATION OF HIS FIFTH AND SIXTH AMENDMENT RIGHTS

100. While this case is unprecedented in many ways, the most troubling feature of this

¹⁴One example is Brianna Boston, a Florida woman who was arrested days after the December 4, 2024, shooting for ending her call with her health insurance provider by stating "Delay, deny, depose. You people are next." When confronted about the perceived threat, Boston told the police that she "used those words because it's what is in the news right now." Leah Sarnoff, *Florida woman charged for threatening health insurance company: 'Delay, deny, depose'*, ABC NEWS (Dec. 12, 2024), <https://abcnews.go.com/amp/US/florida-woman-charged-threatening-health-insurance-company-delay/story?id=116748222>). Again, it was law enforcement that provided that phrase to the media, not Mr. Mangione.

multi-jurisdictional prosecution for the same shooting is that the federal and state prosecutors are seeking to prosecute Mr. Mangione at the same exact time for the same exact act—with the federal government seeking the death penalty and the state prosecutors seek life imprisonment. Moreover, although these are simultaneous prosecutions, state and federal prosecutors have both indicated that they intend for the state case to proceed to trial first.

101. This situation is rare in that, unlike the few historical concurrent state and federal death penalty cases in which the state prosecution is always either stayed or dismissed or the federal death penalty case is brought only after the state case is resolved, here Mr. Mangione is being forced to fight two cases simultaneously for the identical act at the same exact time. For example, in the case of Payton Gendron, he was charged by state and federal prosecutors for the May 2022 racially motivated shooting that killed ten African Americans in Buffalo, New York. In November 2022, while the federal case was pending but before the federal government sought the death penalty, Mr. Gendron pleaded guilty to the New York charges and was sentenced in February 2023 to eleven life sentences without the possibility of parole. Only in January 2014—nearly a year after Mr. Gendron was sentenced on the state case—did the federal government seek the death penalty. As such, Mr. Gendron was never facing state charges when the federal government was seeking the death penalty.

102. Another example is Robert Gregory Bowers, who was charged by state and federal prosecutors for the 2018 Pittsburgh synagogue shooting that killed eleven Jews. Soon after the federal government announced its prosecution that carried the potential death penalty, the state prosecutors agreed to hold the state case in abeyance until the federal case was completed. Accordingly, Mr. Bowers never had to face a concurrent state prosecution while his federal death penalty case was pending.

103. The same is true for Dzhokhar Tsarnaev, who was charged in federal court and faced the death penalty for the April 2013 bombing at the Boston Marathon that killed three and wounded hundreds. Mr. Tsarnaev was also charged in state court for killing a police officer during the ensuing manhunt. Mr. Tsarnaev was first tried and convicted in federal court, while the state prosecutors waited until after his federal sentencing to decide whether to proceed with the state prosecution.

104. As described more fully below, the legal quagmire the concurrent state and federal prosecutions have created make it legally and logistically impossible to defend against them simultaneously without effectively admitting to the federal death penalty charge. This situation is so constitutionally fraught that we are hard pressed to find precedent for such an unprecedented situation. The closest precedent we could find for simultaneous prosecutions involve when *both* jurisdictions are seeking the death penalty, thus affording the same rights and protections to the defendant in both cases. For example, in the case of Dylann Roof, he was charged in both state and federal courts for the 2015 racially motivated shooting that killed 9 African Americans in Charleston, South Carolina. In those cases, Mr. Roof was charged in both federal and state courts with capital offenses and both cases proceeded concurrently, with the federal trial proceeding to trial first. In December 2016, Roof was convicted in federal court and sentenced to death in January 2017. Soon after, in March 2017, Roof pleaded guilty to the state charges to avoid a second death penalty sentence. He was sentenced in April 2017 to nine consecutive sentences of life without parole.

105. In contrast, without this Court's intervention, Mr. Mangione will be forced to defend his federal death penalty case while, at the same time, defending against this state prosecution seeking life imprisonment—a truly unprecedented and untenable situation. Even

worse, in addition to concurrent prosecutions, the Manhattan District Attorney's Office wants their less serious case to go first.¹⁵

106. These concurrent prosecutions raise several considerable constitutional concerns. First, the state and federal prosecutions relate to identical facts. By charging Mr. Mangione in both state and federal courts, prosecutors are trying to get two bites at the apple to convict Mr. Mangione. Even more troubling is that the two bites the prosecutors are seeking are for the death penalty and life imprisonment. This is what the Fifth Amendment's Double Jeopardy Clause is meant to prevent by providing that "nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb." U.S. Const. amend. V.

107. While the prosecution will respond that the Double Jeopardy rule does not apply here because the state and federal governments are "separate sovereigns," that doctrine "has been subject to relentless criticism by members of the bench, bar, and academy." *Gamble v. United States*, 587 U.S. 678, 737 (2019) (Ginsburg, J., dissenting). Moreover, "[a] free society does not allow its government to try the same individual for the same crime until it's happy with the result." *Id.* at 737 (Gorsuch, J., dissenting).

108. New York has long recognized this principle and indeed precluded this very concept when it codified CPL § 40.20, prohibiting a person from being prosecuted for the same offense twice. In fact, if the defendant were prosecuted in federal court and either convicted or acquitted, the state would be precluded from bringing their successive prosecution. They should not therefore be permitted to bring this case, based on identical facts, merely because there has not yet been a final judgement federally. This Court should not allow that to happen here, and certainly not where the potential results are the death penalty and life imprisonment.

¹⁵See 2/21/25 Status Conference Tr. at 13 (ADA Zachary Kaplan: "Your Honor, the agreement remains that we are to try this case first.").

109. Second, in addition to Double Jeopardy concerns, concurrent prosecutions here also violate Mr. Mangione's constitutional rights to defend himself and not to incriminate himself as he is charged with conflicting prosecution theories that may prevent Mr. Mangione from defending one without implicating the other. For example, the dueling theories of these two concurrent prosecutions create the scenario where, in defending against New York's terrorism-related charges, Mr. Mangione could not argue that his alleged conduct was targeted toward one individual, rather than a civilian population, without then incriminating himself in the federal case that charges him with stalking that one individual. This scenario would preclude Mr. Mangione from the ability to waive his Fifth Amendment rights and testify on his own behalf as by doing so, Mr. Mangione could be providing the federal government with evidence that would be used against him in their prosecution.

110. Both the District Attorney's Office and the federal prosecutors (including the Acting United States Attorney under the previous administration) have publicly stated that they have agreed that the state case would proceed first. By prosecuting both cases at the same time, and by agreeing that the state case would proceed to trial before the federal case—without any input from this Court, the federal judge presiding over the federal case or the defendant—the state and federal prosecutors are in essence colluding to obstruct Mr. Mangione's ability to meaningfully defend himself—a right guaranteed under the Sixth Amendment and the Fourteenth Amendment's Due Process Clause. *See, e.g., Chambers v Mississippi*, 410 U.S. 284, 294 (1973) ("The right of an accused in a criminal trial to due process is, in essence, the right to a fair opportunity to defend against the State's accusations"); *Crane v. Kentucky*, 476 U.S. 683, 690 (1986) ("Whether rooted directly in the Due Process Clause of the Fourteenth Amendment, or in the Compulsory Process or Confrontation clauses of the Sixth Amendment, the Constitution

guarantees criminal defendants a meaningful opportunity to present a complete defense.” (quotations and citations omitted)); *People v. Deverow*, 38 N.Y.3d 157, 164 (2022) (“Criminal defendants must be afforded a meaningful opportunity to present a complete defense. This fundamental right is guaranteed by the Due Process Clause of the Fourteenth Amendment and the Compulsory Process and Confrontation Clauses of the Sixth Amendment. Although this right to present a defense does not give criminal defendants carte blanche to circumvent the rules of evidence, a trial court must not apply the rules mechanistically to defeat the ends of justice.” (quotations and citations omitted)).

111. Mr. Mangione’s inability to meaningfully defend himself is made even more serious by the fact that the Attorney General of the United States has directed the prosecutors in the Southern District of New York to seek the death penalty against Mr. Mangione—the most serious punishment available—while the District Attorney’s Office is seeking life imprisonment, the most serious punishment allowable in the state. Allowing the state prosecution to proceed to trial first would violate Mr. Mangione’s constitutional right to defend himself and would force him, despite his presumption of innocence, to choose between the Scylla of life imprisonment and the Charybdis of the death penalty of in order to meaningfully defend himself.

112. Third, should Mr. Mangione be convicted first in a highly-publicized state prosecution, it would be impossible for him to find a fair and impartial jury in his subsequent federal trial where he is still presumed innocent and facing the death penalty. This is particularly true in this case because the evidence in both trials will be nearly identical given that both prosecutions are based on the same exact set of facts and both prosecutions will rely heavily on

police work done by the NYPD.¹⁶ By forcing Mr. Mangione to proceed first in a public state court trial, all of the evidence will be discussed in the news and social media for weeks (and possibly months) before Mr. Mangione starts his federal death penalty trial—making it impossible for Mr. Mangione to get a fair and impartial jury, as guaranteed by the Sixth Amendment and the New York State Constitution.

113. Fourth, concurrent prosecutions will also negatively affect Mr. Mangione’s right to counsel. Because death is the most serious penalty facing a criminal defendant, defense counsel in death penalty cases must be able to properly focus on the pending capital case.¹⁷ Having a concurrent state prosecution at that same time seeking life imprisonment limits counsel’s ability to properly focus on the federal death penalty case. For example, death penalty cases require more robust motion practice than non-death penalty cases, as the docket of federal death penalty cases are replete with motions challenging the imposition of the death penalty given the specific facts of the case and the unique characteristics of the individual defendant. One recent example is *Sayfullo Saipov* who was facing the federal death penalty in *United States v. Saipov*, 17-CR-722 (VSB), for

¹⁶This is evident from statements by federal prosecutors at Mr. Mangione’s federal arraignment on April 25, 2025, where the lead federal prosecutor noted that the federal government would be providing more than one terabyte of discovery materials it received from the state prosecutors, and that much of this state discovery overlaps with the federal discovery materials.

¹⁷Recognizing the difference between death penalty and non-death penalty cases, Congress specifically demanded “enhanced rights of representation” in capital cases based upon “the seriousness of the possible penalty and . . . the unique and complex nature of [capital] litigation.” *Martel v. Clair*, 565 U.S. 648, 659 (2012) (quoting 18 U.S.C. § 3599(d)). Reflecting the need for sufficient representation in a death penalty case, 18 U.S.C. § 3005 provides that, when facing a capital crime, a defendant is entitled to counsel who is “learned in the law applicable to capital cases.” This learned counsel should have “distinguished prior experience in the trial, appeal, or post-conviction review of federal death penalty cases, or distinguished prior experience in state death penalty trials, appeals, or post-conviction review that, in combination with co-counsel, will assure high quality representation.” *United States v. Miranda*, 148 F. Supp. 2d 292, 294 (S.D.N.Y. 2001). In this case, the federal court appointed Avraham Moskowitz as learned counsel for Mr. Mangione.

killing eight civilians in October 2017 by driving a flatbed truck into the pedestrian pathway on the west side of lower Manhattan. In defense of Mr. Saipov, his attorneys filed the following motions relating to the death penalty:

- Motion to preclude the government from seeking the death penalty;
- Motion to dismiss specific aggravating factors from the government's Notice of Intent to seek the death penalty;
- Motion to dismiss the Notice of Intent because of unguided court discretion to choose manner and location of execution;
- Motion to dismiss the Notice of Intent because the death penalty is unconstitutional;
- Motion to delay expert disclosures for the defendant's non-mental health expert relating to the penalty phase;
- Motion to enforce the defendant's Fifth, Sixth, and Eighth Amendment rights to present the live testimony of essential witnesses at the penalty phase of his capital prosecution;
- Motion to extend deadline to serve notice of expert evidence of a mental condition;
- Motion seeking access to the records and papers related to the selection and composition to the grand jury that returned the superseding indictment;
- Motion to compel the government's production of a penalty-phase informative outline;
- Motion for petit jury records to challenge the composition of the petit jury;
- Motion objecting to the disqualification of jurors whose opposition to the death penalty arises from their sincere religious beliefs;
- Motion to stay the proceedings and for alternative remedies to enforce the defendant's right to a petit jury drawn from a fair cross-section of the community under the Sixth Amendment and the Jury Service and Selection Act of 1968;
- Motion challenging the government's penalty phase presentation; and
- Motion to strike the government's Notice of Intent to seek the death penalty

because the federal death penalty is arbitrarily sought and imposed.

114. Notably, these motions were in addition to the usual motions that defense counsel file in a federal criminal case, including a motion to dismiss charges, a motion to suppress evidence, motions *in limine* and a motion for a judgment of acquittal. All of this motion practice is complex and time consuming, yet necessary when a defendant is on trial for his life. Having a concurrent a state case, with its own complicated motions and pretrial hearings, will limit counsel's ability to focus sufficiently on the death penalty case.

115. In addition to more robust motion practice, federal death penalty cases also require a significant mitigation investigation into the defendant's life. As the Supreme Court has noted, defense counsel in a death penalty case "should comprise efforts to discover all reasonably available mitigating evidence and evidence to rebut any aggravating evidence that may be introduced by the prosecutor." *Wiggins v. Smith*, 539 U.S. 510, 524 (2003) (quoting the ABA Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases 11.4.1(C), p. 93 (1989)). That is because the jury must consider the defendant's life as "part of the process of inflicting the penalty of death." *Eddings v. Oklahoma*, 455 U.S. 104, 112 (1982); *see also Payne v. Tennessee*, 501 U.S. 808, 822 (1991) ("We have held that a State cannot preclude the sentencer from considering "any relevant mitigating evidence" that the defendant proffers in support of a sentence less than death."); *Lockett v. Ohio*, 438 U.S. 586, 608 (1978) ("To meet constitutional requirements, a death penalty statute must not preclude consideration of relevant mitigating factors."); *Woodson v. North Carolina*, 428 U.S. 280, 303-04 (1976) ("A process that accords no significance to relevant facets of the character and record of the individual offender or the circumstances of the particular offense excludes from consideration in fixing the ultimate punishment of death the possibility of compassionate or mitigating factors stemming from the

diverse frailties of humankind. It treats all persons convicted of a designated offense not as uniquely individual human beings, but as members of a faceless, undifferentiated mass to be subjected to the blind infliction of the penalty of death.”).

116. This required mitigation investigation is tremendously time consuming. It includes a social history investigation that requires the painstaking collection and analysis of objective, reliable documentation about the client and his family, typically including medical, educational and employment records. The collection of multigenerational records for the client and his family (including his parents, grandparents, siblings and cousins) and analysis of this documentation involve a slow and time-intensive process. Mitigation also includes in-person interviews of family members, neighbors, educators and friends who may have important information to share about a defendant’s history and characteristics. It takes time to build rapport with these individuals so that they feel comfortable sharing their personal insights.

117. Because of the tremendous amount of work and effort required to defend a death penalty case, as well as the more complicated legal issues involved, it generally takes several years from indictment to trial in a capital case. For example, although Payton Gendron was indicted federally in July 2022, his death penalty trial is not scheduled to start until September 2025, more than three years after his indictment. Similarly, Sayfullo Saipov was indicted in November 2017; his federal death penalty trial, however, did not start until January 2023. Another example is Robert Bowers, who was federally indicted in October 2018, and his death penalty trial started in May 2023.

118. These constitutional issues described above arise if Mr. Mangione is forced to proceed first with the state trial. Justice and commonsense therefore dictate that the federal case with the more serious penalty of death should proceed first. This is what often occurs in the

analogous situation when a defendant is facing both criminal and civil proceedings at the same time relating to the same matter; the court presiding over the civil proceedings will often stay the civil proceeding pending the completion of the more serious criminal matter. Given the concerns with how concurrent criminal and civil proceedings may implicate a defendant's Fifth Amendment right against self-incrimination, both state and federal law allow courts to stay civil proceedings in this situation to prevent prejudice. *See* N.Y.C.P.L.R. § 2201 ("Except where otherwise prescribed by law, the court in which an action is pending may grant a stay of proceedings in a proper case, upon such terms as may be just."); *Mook v. Homesafe Am., Inc.*, 144 A.D.3d 1116, 1117 (2d Dep't 2016) ("Although the pendency of a criminal proceeding does not give rise to an absolute right under the United States or New York State Constitutions to a stay of a related civil proceeding . . . there is no question but that the court may exercise its discretion to stay proceedings in a civil action until a related criminal dispute is resolved."); *Kashi v. Gratsos*, 790 F.2d 1050, 1057 (2d Cir. 1986) ("[T]he Constitution . . . does not ordinarily require a stay of civil proceedings pending the outcome of criminal proceedings . . . Nevertheless, a court may decide in its discretion to stay civil proceedings . . . when the interests of justice seem . . . to require such action. The district court exercised sound discretion in staying the trial until the U.S. Attorney declined to prosecute, and in proceeding with the [civil] trial thereafter." (quotations and citations omitted)). Courts have long recognized that the Fifth Amendment right against self-incrimination is implicated in a civil case, creating a Hobson's choice for a criminal defendant and the inability to defend oneself. The situation here is no different and the less serious case must step aside when the death penalty is in play.


119. To the extent courts see the wisdom is staying civil proceedings while there is a pending criminal matter, this Court should appreciate Mr. Mangione's unprecedented situation and concomitant constitutional concerns and allow the death penalty case to proceed first.

120. We raise this issue now to comply with the Court's motion schedule. We note that the federal prosecutors recently filed their Notice of Intent on April 24, 2025, to formally seek the death penalty. Now that a potential death sentence is in play, Mr. Mangione has constitutional and statutory rights not afforded to non-death defendants. We also note that counsel has recently filed motions in federal court to preclude the government from seeking the death penalty. This motion practice is continuing before The Honorable Margaret Garnett in the Southern District of New York. Because the death penalty issue is ongoing, we respectfully request the ability to supplement this motion with additional facts and law relating to the concurrent state and federal prosecutions and how the state case may affect Mr. Mangione's rights as a defendant facing the death penalty in federal court.

IV. CONCLUSION

121. This Court is all that stands between justice and Mr. Mangione being forced to stand trial against illegally obtained evidence, terrorism-related charges that have no application to the alleged shooting of one man and concurrent prosecutions that violate the Double Jeopardy Clause and his constitutional rights. For the reasons stated above, we respectfully request that this Court grant the requested relief.

Respectfully submitted,



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