October 30, 2026

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

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

Dear Judge Carro:

The People raise three arguments in their opposition to the defendant's motion to dismiss. First, that the weapons charges may be prosecuted because Mangione has not been separately prosecuted for federal weapons offenses. Second, that the murder charge may be prosecuted because (a) the statutory definitions of the federal and state offenses focus on different misconduct; (b) the history and purpose of the federal statutes are distinguishable from the second-degree murder statute; and (c) case law supports subsequent prosecutions under circumstances like these. Third, that the defendant's due process claim lacks a basis in law or fact.

The defendant will address these contentions in turn.

1. Mangione Was Federally Prosecuted for the Same Firearm Charged Here

Mangione was charged in federal court with the possession and use of a firearm during and in relation to a crime of violence. Having been so charged, he entered a guilty plea to a criminal action that included this charge. He was therefore legally prosecuted in federal court for possessing the same firearm as is charged here.

The term "prosecuted" is defined by CPL § 40.30(1) as follows:

> A person is prosecuted for an offense, within the meaning of section 40.20, when he is charged therewith by an accusatory instrument filed in a court of this state or of any jurisdiction within the United States, and when the action either:
>
> (a) Terminates in a conviction upon a plea of guilty; or
>
> (b) Proceeds to the trial stage and a jury has been impaneled and sworn or, in the case of a trial by the court without a jury, a witness is sworn.

To be "prosecuted" for an offense, for purposes of CPL § 40.20, the person must first be "charged therewith." Here, Mangione was charged by the federal grand jury with possession of the same firearm at the same time and at the same location as the People are charging here. There is and was no other gun. He was charged with this same firearm both by complaint and indictment in the U.S. District Court for the Southern District of New York, which is a jurisdiction in the

United States. In fact, Mangione referenced this very same firearm in his allocution during his federal plea: "Before traveling to New York, I used a 3-D printer to make part of a gun, and I equipped the gun with the silencer and magazine." (*See* Mangione Federal Plea Minutes (attached as Ex. K to the People's Response at 21).)

The statutory definition of being "prosecuted" for an offense does not require that the defendant plead guilty to that specific offense. The statutory language is deliberate and clear: § 40.30 includes the terms "offense," "accusatory instrument" and "action." If the drafters of § 40.30 had intended for it to apply only when a defendant pleaded guilty to a specific "offense," they would have written that again – as they did in the preamble sentence of the statute ("a person is prosecuted for an offense when . . ."). Instead, they used the term "action" when referring to the triggering event for application of the term "prosecuted" (". . . and when the action either . . .").

Here, Mangione was "prosecuted" in a federal court "action," charged with multiple "offenses." When Mangione pleaded guilty to two counts—i.e., two "offenses"—in that "action," his "prosecution" for those "offenses" was complete, as both the "offenses" that he specifically pleaded guilty to as well as the others that were "prosecuted" as part of that "action." In other words, when Mangione pleaded guilty to the federal indictment, the criminal action in which he had been charged with possession and use of the firearm was terminated for statutory double jeopardy purposes.

The People's analysis of CPL § 40.30 is inconsistent with the statute's plain wording. The People contend that the statute applies only if the defendant was still charged with the offense at the time of the plea. The wording of the statute is to the contrary. The statute is broken into two parts separated by a comma. The first part requires that the offense is charged in an accusatory instrument. Here, the firearms offenses were charged in both the federal complaint and indictment. The second part requires that the "action" result in a guilty plea, which this action did when Mangione pleaded guilty to two counts of the indictment. In describing the action at the time of the plea, the legislature did not state that it had to include any particular offense. If the legislature intended to require the offense to be currently charged at the time of that guilty plea, it would have specified that the offense was part of the action at the time of the plea. But it did not.

The defense's interpretation of the statute is further supported by the fact that the statute allows the charging document to be any accusatory instrument. New York's Criminal Procedure Law defines "accusatory instrument" as (a) "an indictment, . . . an information, a simplified information, a prosecutor's information, a superior court information, a misdemeanor complaint or a felony complaint." CPL § 1.20(1). Because the law does not allow a defendant to enter a felony plea to a felony complaint, the legislature is clearly separating the charging of the offense (which can be in a felony complaint) and the terminating of the "action" by plea or trial (which would have to be on an indictment or information and not a felony complaint). Put differently, if the legislature required the offense to be charged at the time of the plea, it could not have permitted the offense to be charged in any accusatory instrument, such as a felony complaint, to which a defendant may not legally plead guilty or proceed to trial. It is clear that the statute explicitly contemplates a defendant being charged in, for instance, a felony complaint with an offense and then entering a guilty plea or proceeding to trial on a different accusatory instrument, for instance, an indictment that may or may not contain that same offense.

Thus, two different reasons demonstrate that the People's reading of the statute is incorrect. First is the plain language – "action" versus "offense." Second is that the statute contemplates an offense being charged in any accusatory instrument (including one on which a defendant may not legally take a plea or proceed to trial). There is thus no requirement that Mangione be charged with firearms possession at the time of the plea. Rather, the statute requires only that he was charged with that offense at some point, and that he thereafter enters a guilty plea that terminated the action.

None of the cases cited by the People change this result. *Lockett v. Juviler*, 65 N.Y.2d 182 (1985), which addresses a defendant's competency and analogized to federal double jeopardy law, does not even mention § 40.30 or any aspect of state law on previous prosecution. Moreover, the People cite *Lockett* to support its argument that Mangione was never placed in jeopardy on the federal gun charges because the charges were dismissed before trial. In *Lockett*, however, the court found that the defendant was never in jeopardy because the special plea the defendant entered never resulted in "a binding factual finding of the defendant's guilt":

> Under the statute governing this special plea, there were only two options available to the court. First, the court could accept the plea, thus terminating the criminal proceedings and initiating the civil commitment proceedings. Second, the court could reject the petitioner's plea offer and permit the criminal proceedings to continue in the normal course. In no event could the court make a binding factual finding of the defendant's guilt. Therefore, the trial court correctly held that the double jeopardy clause does not preclude restoration of the criminal charges because jeopardy had not attached when the special plea was accepted.

Lockett, 65 N.Y.2d at 187 (citations omitted). In contrast, the guilty plea that Mangione entered in federal court placed him in jeopardy because it resulted in a "binding factual finding" of his guilt.

The People also rely on *People v. Duggins*, 3 N.Y.3d 522 (2004), which interprets the term "same criminal transaction" for purposes of defining a subdivision of First Degree, as opposed to Second Degree, Murder. The *Duggins* case does not refer to the term "prosecuted" under CPL § 40.30, and sheds no light on this case whatsoever. Another cited case, *People v. Aleynikov*, 2013 N.Y. Misc. Lexis 7186, an unpublished trial court opinion, primarily dealt with an entirely different sub-section of the statute, specifically CPL 40.20(2)(f), which provides that sequential prosecutions are permitted for offenses arising from the same criminal transaction where:

> One of the offenses consists of a violation of a statutory provision of another jurisdiction, which offense has been prosecuted in such other jurisdiction and has there been terminated by a court order expressly founded upon insufficiency of evidence to establish some element of such offense which is not an element of the other offense, defined by the laws of this state.

The federal court in the Mangione case did not dismiss the offenses of murder with a firearm and possession of a firearm for insufficient evidence. Unlike New York courts, federal courts have no procedural mechanism and no authority to review grand jury proceedings or to dismiss counts of an indictment for insufficiency of the evidence. Rather, the court concluded that stalking was not a crime of violence, which was an essential statutory element. Because the federal

court did not, and cannot, find insufficiency of the evidence, the subsection referred to in *Aleynikov* is irrelevant to this case.[1]

There are no cases the People can cite, nor arguments it can make, that change the language and plain meaning of the statute. Mangione was prosecuted for the use and possession of the same firearm, on the same date, at the same time, and in the same location as charged here. The People's opposition does not and cannot explain how the evils of state firearms possession differ from the evils of federal firearms possession. There is no basis to find such a difference, much less a sufficiently great difference as to fit within the narrow statutory exception. The federal firearms statutes are intended to accomplish the same purposes as state firearms statutes—the elimination of unlawful firearms and the further punishment of those who use firearms unlawfully against another. *See generally Matter of Abraham v. Justices of N.Y. Supreme Court of Bronx County*, 37 N.Y.2d 560 (1975) (state narcotics possession laws and federal narcotics conspiracy laws were aimed at the same harm, narcotics trafficking); *People v. Helmsley*, 170 A.D.2d 209 (1st Dep't 1991) (state and federal tax fraud laws are intended to prevent the same harm). For these reasons, the firearms offenses should be dismissed.

2. The Federal Government's Prosecution of Mangione for the Killing of Brian Thompson Bars Prosecution of the Murder Charge

The core misconduct of the federal and state prosecutions is the same: the intent to kill and the killing of Brian Thompson. Yes, stalking can also, in some circumstances, apply to conduct different and less extreme than intending to kill someone. But this has nothing to do with whether it also applies to intentional killing.[2] One of the harms clearly addressed by the expansive federal stalking statute is stalking with the intent to kill and resulting in the killing of the person stalked. It is a statute that, like a state murder statute, is intended to keep people safe from being murdered—the oldest crime there is. That the stalking statute also criminalizes stalking conduct that does not result in death does not change that analysis. As the Court of Appeals in *People v. Claud*, 76 N.Y.2d 951 (1990) held, two statutes do not have to be identical in elements, breadth, or content so long as they both address generally the same topic – in this case ensuring the public safety from people who may kill them.

The similar focus of the stalking and murder statutes is demonstrated by the fact that Mangione was charged with murder and stalking by committing virtually the same actions. It is also significant that the federal stalking statute—which also penalizes committing murder through stalking—is not limited by any particular relationship between the person stalked and the person doing the stalking or to any class of people. Just like anyone can be guilty of murder under state law, so can anyone be guilty of stalking with intent to kill. Likewise, given that there need not be

[1] To the extent the *Aleynikov* decision also cites CPL § 40.30 to find that the defendant was not placed in jeopardy because the count was dismissed before trial, the court provides no analysis of § 40.30's statutory language. It is also not clear from the *Aleynikov* decision whether the defendant even raised the same argument that Mangione raises based on the clear language of CPL § 40.30.

[2] The crime of stalking provides, in part, as follows: "Whoever (1) travels in interstate or foreign commerce with the intent to kill, injure, harass, intimidate or place under surveillance with intent to kill, injure, harass or intimidate another person…."

any prior relationship between the defendant and the victim to commit stalking, nearly every premeditated state murder could be charged as federal stalking as long as the defendant used an element of interstate commerce (such as a cellphone or the internet) as part of the plan to commit murder.

The People spill much ink pointing out that the stalking statute has elements of interstate travel or the use of electronic communication that the second-degree murder statute does not have. However, these elements, tending to provide the required federal nexus, are not related to the conduct the statute is seeking to prevent. People travel in interstate commerce or use electronic communications devices every day without committing a crime. The federal government has no interest in stopping people from travelling or using electronics. Travel and electronics are not the evils or harms being prevented. The federal government does have an interest, however, in preventing people from travelling or using electronics as part of the crime of killing another person, or intending to do so. That is what makes the stalking statute similar to the murder statute in terms of the evils or harms both are looking to prevent.

The People's reasoning does not make sense for another reason: every federal statute will have some aspect of impacting interstate commerce that a state statute will not have. If the People's argument that the interstate commerce element causes the statute to be fatally different was correct, there would never be an instance where a federal prosecution would bar a state prosecution.

The People also argue that because the stalking statute requires the defendant to place the victim in fear that it is very different than the murder statute, which of course has no such element. If the stalking statute stopped at fear and did not also go on to criminalize the intent to kill the person, the People might have a better point. However, the scenario in Mangione's case, where a person stalks another with the specific intent to kill them and then does kill them, demonstrates how the stalking and murder statutes are virtually identical in the harms or evils being prevented. It is of no moment that the stalking statute requires some federal nexus to satisfy the interstate commerce element of federal jurisdiction or that it also requires fear on the part of the victim. These are peripheral distinctions that do not go to the heart of the conduct being punished.

Perhaps the best indication that the stalking statute functions as a murder statute is that Mangione's federal sentencing guidelines calculation is likely to be the exact same as if he committed murder under federal law. Mangione will unquestionably be sentenced as though he committed the crime of murder precisely because the sentencing structure is built into the statute. It is very likely that Mr. Mangione will face a guidelines sentencing range of approximately 25 to 30 years of incarceration, which is virtually identical to a state murder sentence. The sole driver for that sentence is intentional murder.

The People have mistakenly referred to the killing of Brian Thompson as a sentencing enhancement or sentencing provision in the federal case. This is wrong, as it was an essential element of the statute and the charge that Mangione intended to cause Thompson's death by killing him. Consistent with the statute, the federal indictment charged that "Mangione . . . with the intent to kill . . . another person . . . engaged in conduct that placed that person in reasonable fear of the death of . . . that person, and in the course of engaging in such conduct caused the death of that person, to wit, Mangione travelled across state lines via an interstate bus line for the purpose of

stalking and killing Brian Thompson and while in New York, Mangione stalked and then shot and killed Thompson . . . ." The intent to kill Thompson and the killing of him were essential statutory elements of the offense of conviction. Far from being mere sentencing enhancements found by the federal court as part of a sentencing hearing, the intentional killing of Thompson was specifically charged. Moreover, Mangione provided a full factual allocution, admitting that he intended to kill Thompson and then killed him with a firearm.

The best evidence of the People's flawed reading of the federal stalking charge are the state charges that the People itself points out. The State of New York has a stalking crime as well as a menacing crime. The basic stalking offense, Stalking in the Fourth Degree, requires that a defendant engage in a course of conduct targeting a person knowing that they will instill fear in the person. It is a B-level misdemeanor. The basic menacing crime, Menacing in the Third Degree, requires that a defendant place another in fear of death or physical injury. It is also a B-level misdemeanor.

The difference, of course, between those crimes and federal stalking is that the latter explicitly encompasses the intentional killing of the victim, as evidenced by the federal charge and guilty plea here. Moreover, where, as here, the defendant intentionally kills the victim, the potential punishment is life in prison and not 90 days in jail, the maximum sentence for a B misdemeanor. It is hard to imagine a crime more different from a B misdemeanor than this one.

In arguing against the similarities between federal stalking and murder, the People argue that Judge Garnett's finding that stalking is not a crime of violence dispositively establishes the differences between the offenses. It would be an interesting argument if not for the fact that another federal judge (Judge Brian M. Cogan) found that federal first-degree murder was not a crime of violence under the same analysis Judge Garnett followed. *See United States v. Ahemeid*, 819 F. Supp. 3d 143 (E.D.N.Y. 2026). By the People's logic, the federal murder statute would therefore be designed to prevent very different kinds of harm or evil than the state murder statute simply because the federal murder statute is not a crime of violence. That cannot be.

Moreover, reviewing Judge Garnett's and Judge Cogan's crime of violence analysis demonstrates why it has no relevance to this Court's double jeopardy analysis. In a nutshell, because federal first-degree murder can be both intentional murder, which would be a crime of violence, and felony-murder, which may not be, the entire crime of first-degree murder is considered not a crime of violence. In determining whether a federal crime is one of violence, the judge is obligated to find "the hypothetically least serious conduct that the charged crime could possibly cover." *United States v. Mangione*, 818 F. Supp. 3d 509, 516 (S.D.N.Y. 2026).

The relevance of murder being a crime of violence or not in the Mangione case and the *Ahemeid* case was the same, specifically because the crime of firearms possession during and in relation to a crime of violence requires, predictably, a crime of violence as an essential element of the offense.

Understanding how first-degree murder or stalking involving an intentional killing can be something other than a crime of violence requires knowing how different federal statutes can be divisible. A federal offense is divisible if the "statute sets out one or more elements of the offense

in the alternative." *Pannell v. United States*, 115 F.4th 154, 160 (2d Cir. 2024) ("A statute will be considered divisible when it 'lists multiple elements disjunctively' but not when it simply 'enumerates various factual means of committing a single element.'") (quoting *Mathis v. United States*, 579 U.S. 500, 506 (2016)).

Judge Garnett found that the stalking statute was divisible into four distinct crimes. Having broken the statute into four distinct crimes, the court then essentially devised a hypothetical set of facts that would be the least serious conduct that would violate the crime. Just as Judge Cogan conducted such an analysis with first-degree murder and concluded it was not a crime of violence, Judge Garnett did the same thing with stalking and reached the same conclusion. However, the fact is that the federal crime of stalking can be violated in many ways, demonstrating that the statute was meant to address public safety on a comprehensive level, from harassment on the one side to the intent to kill the victim on the other. That federal stalking can also be committed by harassing or assaulting the victim or having the intent to do so does not detract from the fact that it can also be violated by intending to kill the victim.

The People cite additional cases that are inconsistent with, or at a minimum do not advance, their position. In *Aldridge v. Kelly*, 157 A.D.2d 716 (2d Dep't 1990), for instance, the defendant pleaded guilty in an Orange County court to stealing two blank checks of a business owned by someone named Henry Boyajian. A month later, he was charged in a separate county, Rockland, with uttering those two checks at the Eastchester Savings Bank in Rockland County. The Second Department did not find a double jeopardy bar because the two crimes involved different victims, took place in different counties and involved different property. The victim in the Orange County crime was Henry Boyajian, the owner of the businesses whose checks were taken. The victim in the Rockland case was Eastchester Savings Bank where the defendant negotiated the forged checks. The court in *Aldridge v. Kelly* concluded that "it is well established that a loss to a different victim permits a separate prosecution." *Id.* at 718. In addition, the court found that the two crimes were committed in two different jurisdictions, indeed in even different counties, and that the stolen property was different as to each offense. The facts here could hardly be more different. Here, there is one victim and one single episode of conduct that took place virtually instantaneously in one location.

The People cite no cases that are inconsistent with the defense argument. In *Sharpton v. Turner*, 170 A.D.2d 43 (3d Dep't 1991), the defendant was tried and acquitted in New York County on charges of scheme to defraud, falsifying business records and grand larceny in connection with his soliciting donations for the National Youth Movement and then misappropriating the money to himself. After being acquitted, the defendant was charged in Albany County with offering a false instrument in connection with his State Income Tax return. Not surprisingly, the Third Department found stealing money through the youth charity was a different offense than falsifying a state tax return. Among other self-evident differences, the crimes involved different victims, particularly the individual donors in the charity fraud case and the State of New York in the false tax return case. Again, the facts here involve one victim and one criminal transaction.

There are several additional cases illustrating how great the difference in harms and evils must be in order to fit into the narrow exception of § 40.20(2)(b). As Justice Wiley said in *Manafort*, "where the harms or evils contemplated by the differing statutes are generally similar,

the courts will find that the exception under CPL 40.20(2)(b) does not apply." *People v. Manafort*, Decision and Order, p. 16. In *People v. Claud*, 76 N.Y.2d 951 (1990), the Court of Appeals compared Navigation Law, Section 49(4)(b) to Babylon Town Code, Section 86-4 in the context of a boat operator who caused serious physical injuries to others. The defendant had pleaded guilty to the town code offenses and moved to dismiss Navigation Law offenses brought in County Court. The Court of Appeals acknowledged the marked differences between the two bodies of laws. The Navigation Law required intoxication, which the Town Code did not; the Navigation Law also referred to the prevention of serious physical injury where the Town Code provided only that a boat shall be operated in a prudent manner. Despite these clear differences, the Court found that both laws were designed to "assure the safe operation of boats so as to protect human life and avoid injury." *Id.* at 953.

Claud is particularly relevant to the facts here. Although the Navigation Law had elements such as intoxication, assault and serious physical injury that the Babylon Town Code did not, the two statutes generally addressed the topic of boater safety to avoid personal injury.

The People rely on *People v. Lanahan*, 276 A.D.2d 906 (3d Dep't 2000), saying it is particularly instructive, but the case does not support their position. The defendant in *Lanahan* committed two burglaries on consecutive nights. On the same night as the second burglary, he was arrested for a parole violation. During a search of his backpack following his arrest, the police found property stolen during the burglaries. Defendant was indicted for the two burglaries. Several months after being indicted, the defendant pleaded guilty to possession of stolen property in city court in connection with the property he possessed in the police station. He moved to dismiss the burglary charges. The Third Department compared the crimes of burglary and possession of stolen property and concluded that they were sufficiently different to allow the burglary offenses to continue. Burglary was a crime involving the sanctity of one's dwelling, place of business or other place where privacy and security were expected. Possession of stolen property lacks all those elements and focuses instead on pure property and theft offenses.

The Court relied heavily on the fact that the burglary offenses were committed at different times and in different locations in concluding that the harms and evils of each offense were different, ruling "the separate nature of the offenses is particularly evident under the facts of this case where they were committed at different times in different geographical locations." *Id.* at 908. The Court's core reasoning was that the defendant pleaded guilty to possession of stolen property due to the property he had in his backpack at the police station, which is a crime very different than the burglary offenses he had committed earlier that night and the previous night.

In *People v. Bryant*, 92 N.Y.2d 216 (1998), the defendant pleaded guilty to four federal crimes: (i) bank robbery, (ii) placing a person in danger through the use of a dangerous instrument during such bank robbery, (iii) possession of a firearm during such bank robbery and (iv) conspiracy to commit a crime against the United States. The Rockland County District Attorney then returned an 18-count indictment. Fifteen of those counts were dismissed as being barred by the statutory double jeopardy provision. Three survived: (i) attempted murder of a police officer, (ii) two counts related to possession of defaced firearms. Because the attempted murder of a police officer was so drastically different from bank robbery or placing someone in danger during a bank

robbery, the trial court permitted that count to go forward. The *Bryant* decision demonstrates how different the harms must be to pass the double jeopardy bar.

There are no cases where the identical conduct—the same victim, the same gun, the same actions by the defendant, the same place and the same time—that was prosecuted by federal authorities was then also prosecuted by state authorities. Every case allowing successive prosecution involved conduct that was different between the two prosecutions. Either the victim was different or the conduct was different or the location was different or the timing was different.

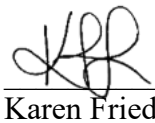
As a result, the murder charge must be dismissed under the so-called statutory double jeopardy provisions.

3. Defendant's Due Process Claim

Counsel relies on the arguments made in Mangione's opening brief.

4. Conclusion

For the reasons set forth in Point One, the firearms offenses should be dismissed; for the reasons set forth in Point Two, the murder count should be dismissed; and for the reasons set forth in Point Three, the indictment should be dismissed.



Karen Friedman Agnifilo, Esq.
Marc Agnifilo, Esq.
Jacob Kaplan, Esq.
Agnifilo Intrater LLP
140 Broadway, Suite 4530
New York, NY 10005

Counsel for Luigi Mangione

cc: District Attorney's Office (via email)