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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
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3 CARTER COE, *et al*,
4 Plaintiffs,

5 v.

26 Civ. 4641 (KPF)

6 TODD BLANCHE, *et al*,
7 Defendants.

Teleconference
Decision

8 -----x

New York, N.Y.
June 24, 2026
11:05 a.m.

10 Before:

11 HON. KATHERINE POLK FAILLA,

District Judge

13 APPEARANCES

14 LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC.
15 Attorneys for Plaintiffs

16 BY: OMAR GONZALEZ-PAGAN

-and-

17 AMERICAN CIVIL LIBERTIES UNION FOUNDATION

BY: CHASE STRANGIO

18 U.S. DEPARTMENT OF JUSTICE, CIVIL DIVISION

Attorneys for Government Defendants

19 BY: LUKE MILLER

SARAH WELCH

20 NIXON PEABODY LLP

21 Attorneys for NYU Defendants

22 BY: TIMOTHY SINI

ZACHARY A. CUNHA

23 LINDSAY MALESON
24
25

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1 (Teleconference)

2 (Case called)

3 THE DEPUTY CLERK: Counsel, please state your name for
4 the record, beginning with plaintiffs.

5 MR. STRANGIO: Good morning, your Honor.

6 This is Chase Strangio, on behalf of plaintiffs. And
7 with me on the line is Omar Gonzalez-Pagan, also on behalf of
8 plaintiffs.

9 THE COURT: Good morning. And thank you to both of
10 you.

11 Are you able to hear me, Mr. Strangio?

12 MR. STRANGIO: I am, your Honor. Thank you very much.

13 THE COURT: Thank you so much.

14 All right. Representing the DOJ defendants, please.

15 MR. MILLER: Good morning, your Honor.

16 This is Luke Miller and Sarah Welch, on behalf of the
17 DOJ defendants.

18 THE COURT: Good morning. And thank you to both of
19 you for appearing.

20 And representing the NYU defendants, please.

21 MR. CUNHA: Good morning, your Honor.

22 Zachary Cunha, on behalf of the NYU defendants. And
23 I'm joined by my colleagues Timothy Sini and Lindsay Maleson.

24 THE COURT: Okay. Thank you all very much.

25 And so as I mentioned yesterday, I thought that the

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1 most efficient thing to do today was to give you an oral
2 decision as soon as I could get it together, and I will do that
3 now. I'm going to remind you, those of you who are listening,
4 that there can be no recording and no rebroadcasting of this
5 decision.

6 Additionally, let me note that I had asked for folks'
7 indulgence until noon today. But it's now 11:10, and I cannot
8 guarantee that I will be done with my decision -- because it is
9 quite lengthy -- at the noon hour. So I'm going to understand
10 that the agreement or at least the -- yes, the agreement
11 between the parties not to require the production of materials
12 exists for the length of this oral decision and the time it
13 takes me to post an order that regards that decision. So
14 you'll have to tell me if you disagree with that, and no one is
15 disagreeing with that.

16 All right. I want to be very clear that, again, this
17 was a very serious case, very well-argued. I still think it is
18 the most efficient use of everyone's time for me to give an
19 oral decision, and I'm going to do that now. But it is a
20 rather lengthy decision. And I'm going to ask you please to
21 mute yourselves, to be comfortable, and to listen as I read
22 this decision into the record.

23 Let me begin my decision by thanking those of you who
24 are on this call and those of you who have assisted those on
25 the call for the work that you've done in this case and, in

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particular, on this motion for a temporary restraining order.

I'm fully aware that there were teams of attorneys and support staff behind the scenes. I want them to know that their work on this matter on a very short schedule did not go unnoticed.

I also want to extend my thanks to the four oralists who were willing to give me nearly three hours of their time yesterday.

My experience has been that oral argument does not always aid me in arriving at a decision. But yesterday's oral argument was helpful in clarifying several points, and let me speak to those points now.

To begin, I now have a clearer picture of the information as to which plaintiffs are resisting disclosure. That information comprises both their identities as transgender persons, and the very detailed sensitive records of the gender-affirming care that they have received. And considering that information in its totality is significant. After all, as plaintiffs' counsel noted, the records sought are unusually detailed and include – and I'm quoting from page 11 of the transcript – discussions of familial history, of mental health history, their problems in school, their psychological development, as well as whatever other medical conditions that they may have or experienced beyond gender dysphoria.

Counsel also correctly noted that these materials were sought for a period of six years, which for many of the minor

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1 plaintiffs represents a substantial percentage of their lives.
2 The importance of protection of this information – and indeed
3 ultimately of temporary injunctive relief – is clear when one
4 considers the context in which the information was sought.

5 The complaint details the backstory to this litigation
6 at paragraphs 41 through 115, and the Court will not repeat all
7 of that information here. It suffices to note, however, that
8 in the first few days of the current administration, multiple
9 executive orders were issued that sought to identify, to
10 demonize, and ultimately to eradicate an entire population of
11 transgender people.

12 Pursuant to that policy, DOJ issued a flurry of civil
13 administrative subpoenas to healthcare institutions that courts
14 quashed or severely limited. And in doing so, these courts
15 found, among other things, that the subpoenas were pretextual;
16 that they were – and I quote from one decision – a smoke screen
17 for the government's true objective of pressuring pediatric
18 hospitals into ending gender-affirming care through commencing
19 vague, suspicionless investigations. This particular court
20 decision is quoted in paragraph 79 of the complaint.

21 But undeterred by its disastrous showing in the
22 courts, DOJ decided to issue nearly identical document requests
23 in the form of grand jury subpoenas emanating from the Northern
24 District of Texas, on which more later. The need for
25 protection of plaintiffs' identifying and sensitive medical

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1 information is further underscored by statements of counsel for
2 NYU Langone, who noted that while the facility was expending
3 significant time and resources to implement redactions to
4 plaintiffs' medical records, with the specter of a later
5 government request for deanonymization always in the
6 background – and now I'm quoting from counsel – in an age of
7 artificial intelligence and multiple points of data that are
8 inherent in a complex medical record, counsel could not
9 guarantee anonymization. This exchange is at pages 74 and 75
10 of the transcript.

11 Separately, plaintiffs' counsel aided me in
12 understanding the specifics of the relief sought and why this
13 action cannot simply be dismissed as a motion to quash or an
14 end-run around Rule 17(c). Whether by accident or by design,
15 the administration's policies *vis-à-vis* transgender persons
16 embody a concerted effort to obtain deeply private information
17 about an entire class of individuals without their knowledge or
18 consent.

19 After the issuance of the executive orders and the
20 Bondi and Shumate memoranda, DOJ attorneys on both the civil
21 and criminal sides issued expansive document requests to third
22 parties without prior notice to the individuals whose
23 information was being sought. It is only the fortuity of NYU's
24 interpretation of the New York Shield Law that allowed
25 plaintiffs in this case to seek redress for claimed

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1 constitutional violations caused by the grand jury subpoena.
2 And then, only then, did they learn of a completely different
3 administrative subpoena that could have resulted in the
4 turnover of this sensitive information without any opportunity
5 for petition or redress.

6 This record makes plain the cold comfort of telling
7 plaintiffs to pursue their claims under Federal Rule of
8 Criminal Procedure 17(c). They wouldn't even know where to
9 begin.

10 In extrapolating from the metaphor offered by
11 plaintiffs' counsel, protecting plaintiffs' constitutional
12 rights in this environment is worse than a game of
13 whack-a-mole; it's being forced to play the game blindfolded.
14 And this is precisely the factual scenario for which the
15 *Gonzales* case was designed.

16 Finally, I had the opportunity to examine the parties'
17 positions concerning the interplay between Rule 6(e) and
18 analogous grand jury secrecy requirements, and plaintiffs'
19 constitutional rights. Now, many in the gallery yesterday
20 chuckled at Mr. Miller's invocation of the term "allegedly."
21 But I appreciate the seriousness with which any government
22 attorney takes his or her grand jury secrecy obligations. The
23 fact remains, however, that the government was not perfectly
24 consistent in its reticence about the grand jury investigation,
25 since counsel pointedly referenced Northern District of Texas

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1 Judge O'Connor as currently having some undefined role in the
2 government's criminal investigation, and later volunteered that
3 no patients would be prosecuted – this is the transcript at
4 page 66 – and that the government, in fact, viewed these
5 individuals as victims.

6 But, more fundamentally, this Court will not blind
7 itself to reality. And, in this case, reality is the timeline
8 of DOJ's efforts and, in particular, its efforts to recast
9 discredited civil administrative subpoenas as grand jury
10 subpoenas from a hand-picked faraway jurisdiction in order to
11 minimize judicial review of constitutional infirmities.

12 Let me end my introductory comments with this
13 observation: There was precious little on which the parties
14 agreed yesterday, but one point of agreement was on the
15 uniqueness of the facts of this case. Of course, the parties
16 want me to draw different conclusions from that fact, but I
17 agree with you that the facts of this case are unique. And the
18 conclusions the Court reaches on this motion might not be
19 transferable to other cases.

20 Ultimately, at this early stage, on this record, and
21 given the paramount importance of preserving the privacy of the
22 underlying identification and medical information, I am
23 provisionally certifying a class in accordance with plaintiffs'
24 request and granting plaintiffs' application for a temporary
25 restraining order to enjoin DOJ from seeking sensitive health

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1 and identification information regarding class members.

2 Let me speak to the parties. And I'll speak about
3 them very summarily, because folks have read the complaint in
4 this case. But the plaintiffs and the similarly situated
5 members of the proposed class are minors, their parents, and
6 young adults who received gender-affirming care in New York
7 City.

8 There are two sets of defendants here: Defendant
9 Blanche is the Acting Attorney General of the United States.
10 Defendant United States Department of Justice is a federal
11 executive agency, and I will refer to them as the DOJ
12 defendants. Defendants NYU Langone Health System, NYU Langone
13 Hospitals, and NYU Grossman School of Medicine are medical care
14 providers and corporations organized under the laws of New York
15 with their principal place of business in Manhattan. I will
16 refer to them as the NYU defendants.

17 In terms of factual background, as I mentioned, I will
18 summarize as best I can the very extensive discussions that are
19 in the complaint.

20 Through a series of executive orders and federal
21 agency actions, this administration has carried out a
22 systematic campaign to attack and dehumanize transgender
23 people, as shown in complaint paragraphs 41 through 88.

24 On January 20th of 2025, President Trump issued
25 Executive Order 14168, the Gender EO, to declare a national

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1 policy of recognizing only two birth-assigned sexes. And on
2 January 28th, 2025, he issued Executive Order No. 14187, the
3 Denial of Care EO, to put an end to gender-affirming medical
4 care for minors.

5 As one of several federal agencies tasked with
6 implementing the EOs, DOJ has explored numerous legal avenues
7 for limiting or ending the provision of gender-affirming
8 medical care. At first, DOJ issued civil administrative
9 subpoenas under HIPAA to more than 20 healthcare institutions
10 across the country seeking information about patients receiving
11 gender-affirming medical care. Before April 30th of 2026,
12 every court to have considered motions regarding these
13 subpoenas had granted the motions to quash or limit the
14 subpoenas. And, in several cases, DOJ had represented that
15 anonymized data without patient-identifying information would
16 be sufficient for purposes of those investigations.

17 Shifting tactics, on April 30th, 2026, DOJ filed a
18 motion to enforce an administrative subpoena in the Northern
19 District of Texas, which promptly granted the motion. And
20 having found a jurisdiction — indeed the only jurisdiction —
21 that was receptive to its arguments, DOJ strategized to
22 concentrate legal actions related to gender-affirming medical
23 care in the Northern District of Texas.

24 The administration's anti-transgender policies and
25 DOJ's legal actions have directly impacted healthcare

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1 institutions in the New York City area, including the NYU
2 defendants. These defendants had established and maintained a
3 transgender youth health program through which they have
4 provided gender-affirming medical and psychosocial services for
5 transgender youth. They stopped providing these services in
6 February 2026, in response to declarations and proposed rules
7 by the administration that threatened their federal funding.

8 On May 7, 2026, NYU Langone Hospitals was among
9 several health institutions in New York City to receive a grand
10 jury subpoena from the United States Attorney's Office for the
11 Northern District of Texas, seeking the identifying and
12 detailed sensitive health information of all transgender
13 persons who received medical care as treatment for their gender
14 dysphoria while they were minors, as well as the identity of
15 their parents, from January 1st of 2020 through May 5th of
16 2026.

17 The subpoena directed the NYU defendants to provide
18 the requested records by 9 a.m. on June 10th, 2026. Although
19 it was issued by a grand jury in the Northern District of
20 Texas, it curiously requested that the information be made
21 available to a special agent in the Kansas City field office of
22 the FDA Office of Criminal Investigations.

23 On May 11th, 2026, pursuant to New York state's Shield
24 Law, the NYU defendants made public that they had received the
25 subpoena through a public notice on their website, and they

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1 sent virtually identical notices to affected patients,
2 including plaintiffs and members of the proposed class, through
3 an online portal known as MyChart.

4 On June 2nd of 2026, plaintiffs filed a complaint, as
5 well as an emergency application for a TRO and provisional
6 class certification, along with the supporting papers in this
7 district. The case was originally assigned to Judge Vargas.
8 The complaint alleges three counts: Violation of the Fifth
9 Amendment due process clause's right to informational privacy
10 against DOJ defendants; violation of the Fourth Amendment's
11 protection against unreasonable and oppressive governmental
12 intrusions on individual privacy against DOJ defendants; and
13 breach of physician-patient confidentiality under New York
14 Civil Practice Law and Rules Section 4504(a) against the NYU
15 defendants.

16 Plaintiffs seek a declaration that the subpoena's
17 request for the identifying and sensitive health information of
18 plaintiffs and members of the proposed class violates their
19 rights to privacy under the Fifth Amendment, and to be free
20 from unreasonable searches and seizures under the Fourth
21 Amendment.

22 They seek a declaration that any disclosure by the NYU
23 defendants constitutes a breach of physician-patient
24 confidentiality under New York law; they seek preliminary and
25 permanent injunctive relief, preventing the DOJ defendants from

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1 seeking, receiving, using, retaining, or disseminating any
2 identifying or sensitive health information; they seek
3 preliminary and permanent injunctive relief preventing the NYU
4 defendants from disclosing or producing any identifying or
5 sensitive health information; they seek class certification, a
6 waiver of the requirement for the posting of a bond, and an
7 award of attorneys' fees and costs to plaintiffs.

8 In terms of class certification, the plaintiffs have
9 identified a class and a subclass under Federal Rule of Civil
10 Procedure 23(b)(2). The class is defined at paragraphs 147 and
11 148 of the complaint, and I won't repeat them here.

12 On June 4th, 2026, the parties jointly stipulated to
13 an extension of the deadline for the production of information
14 and records until June 24th. And then yesterday that was
15 extended until today at noon, and now it extends until after
16 this decision is issued and the order filed.

17 There was then filing from the parties on both the
18 plaintiffs' motion for a TRO and the motion for a provisional
19 class certification. Judge Vargas granted two motions for
20 leave to file amicus briefs, one by several states, and another
21 by the City of New York.

22 Over the weekend, Judge Vargas understood that she had
23 a conflict. She adjourned the hearing. The case was then
24 reassigned to me. And I scheduled the TRO hearing to take
25 place, as it did, yesterday.

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1 I know the parties are aware of the standards for a
2 temporary restraining order, and I'm therefore going to refer
3 to them as briefly as I can.

4 A preliminary injunction should issue only where a
5 plaintiff demonstrates a likelihood of success on the merits
6 and a threat of irreparable harm absent relief. Courts also
7 consider whether equity tips in the plaintiffs' favor; whether
8 the public interest favors an injunction; and where, as here,
9 the government is a party to the lawsuit, the equity and public
10 interest factors merge.

11 One case for these propositions is *New York v. United*
12 *States Department of Homeland Security*, 969 F.3d 42 (2d Cir.
13 2020).

14 That's all I'm going to say about the requirements for
15 a temporary restraining order. I really don't think the
16 parties have dispute about them.

17 The bigger issue is, of course, the antecedent issue
18 of my jurisdiction to even consider plaintiffs' challenges.
19 And that was the focus of yesterday's oral argument.
20 Ultimately, this Court concludes that it has jurisdiction to
21 evaluate plaintiffs' claims arising from the grand jury
22 subpoena and to issue the requested relief.

23 Much discussion took place yesterday over the Second
24 Circuit's 2006 decision in *New York Times Company v. Gonzales*,
25 459 F.3d 160. In that case, the Second Circuit suggested that

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1 a district court in this circuit may properly exercise
2 jurisdiction over claims arising from a grand jury subpoena,
3 including one issued by another court in a different
4 jurisdiction, by relying on its discretion to issue declaratory
5 relief under the Declaratory Judgment Act. That the Federal
6 Rules of Criminal Procedure provide mechanisms to directly
7 challenge the subpoena, including the filing of a motion to
8 quash under Rule 17(c) in the district court overseeing the
9 grand jury proceedings, does not preclude per se a declaratory
10 judgment by the district court adjudicating the collateral
11 civil challenge.

12 Indeed, the Second Circuit reasoned – and I'm now
13 quoting from the decision at page 166 – Were we to adopt the
14 government's theory and treat a motion to quash under Rule
15 17(c) as a special statutory proceeding, we would establish a
16 precedent potentially qualifying a substantial number of
17 federal rules of criminal and civil procedure as special
18 statutory proceedings, and thereby severely limit the
19 availability of declaratory relief.

20 In addition, the Second Circuit has separately
21 recognized that a district court is entitled to use its
22 inherent equity power to award temporary injunctive relief in
23 appropriate circumstances in order to maintain the status quo,
24 such as over claims pending before an administrative agency.
25 Cases for this proposition include *Sheehan v. Purolator Courier*

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1 *Corp.*, 676 F.2d 877 (2d Cir. 1981), and *FTC v. Dean Foods*
2 *Company*, 384 U.S. 597 (1966).

3 Let me acknowledge — and I will — that *Gonzales* may
4 not be directly on point. Nonetheless, I am convinced that the
5 Second Circuit's decision on the merits of the reporters'
6 privilege in that case reflects its understanding that it and,
7 by extension, the district court that adjudicated the merits
8 and issued the summary judgment in the first phase of that
9 case, had jurisdiction to evaluate a collateral challenge to a
10 grand jury subpoena issued by a different jurisdiction and,
11 therefore, the equitable power to issue the appropriate relief
12 should the court agree with the merits of that collateral
13 challenge.

14 To be sure, *Gonzales* discusses only declaratory
15 relief, and that was mentioned by counsel for DOJ defendants
16 yesterday. But as plaintiffs point out, the underlying
17 complaint in *Gonzales* also sought injunctive relief. Nothing
18 about the Second Circuit's decision in *Gonzales* limited the
19 exercise of jurisdiction to the type of relief sought.

20 In any event, the very language of the Declaratory
21 Judgment Act indicates that the prevailing party in a
22 declaratory judgment may seek further relief in the form of
23 damages or an injunction, meaning that the availability of
24 declaratory relief does not preclude this Court's authority to
25 issue an injunction based on the same considerations. One case

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1 for that proposition, I cite *Horn & Hardart Company v. National*
2 *Rail Passenger Corp.*, 843 F.2d 546 (D.C. Cir. 1988).

3 Here, I observe that my jurisdiction to decide the
4 collateral challenge and issue equitable relief is especially
5 important given the insufficiency of Rule 17(c) in the unique
6 circumstances of this case.

7 Plaintiffs seek to protect highly sensitive and
8 comprehensive personal information about their transgender
9 status, as well as detailed medical history from a concerted
10 serial effort by this administration to identify and target a
11 marginalized group.

12 The filing of a Rule 17(c) motion to quash the NYU
13 subpoena in the Northern District of Texas would not have any
14 effect on other grand jury or civil administrative subpoenas
15 seeking the same information from NYU and other healthcare
16 institutions in New York City, especially when, as we found
17 out, plaintiffs have no way of learning of the existence of any
18 subpoena. Like the aforementioned game of whack-a-mole, the
19 government may simply switch their strategy and go after
20 plaintiffs' private information under the guise of a different
21 investigation.

22 Now, the Second Circuit addressed an analogous issue
23 in *Gonzales*, and found there that a motion to quash under Rule
24 17(c) would not offer plaintiffs the same relief where – and I
25 quote – It is unknown whether subpoenas have been issued, and

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1 if so, whether the subpoenaed entities have already complied.
2 Only an order enjoining the government from seeking plaintiffs'
3 identifying and sensitive personal information is sufficiently
4 protective of plaintiffs' privacy interests and enough to
5 afford complete relief to plaintiffs in this case.

6 Separately, I have determined that I have subject
7 matter jurisdiction over the case, and that plaintiffs have
8 established standing to sue. I have subject matter
9 jurisdiction under 28 U.S.C., Section 1331, because plaintiffs
10 raise constitutional issues that invoke federal question
11 jurisdiction. I also have subject matter jurisdiction under 28
12 U.S.C., Section 1346, as a civil action against the United
13 States founded upon the Constitution, an act of Congress, or an
14 executive regulation; as well as under 28 U.S.C., Section 1361,
15 as an action to compel an officer or agency to perform a duty
16 owed to plaintiffs. And I have supplemental subject matter
17 jurisdiction over plaintiffs' state law claims under 28 U.S.C.,
18 Section 1367(a).

19 Turning now to the issue of standing, I find that
20 plaintiffs satisfy all three elements: Injury, causation, and
21 redressability for Article III standing. For one case on that
22 proposition, I cite *Lujan v. Defenders of Wildlife*, 504 U.S.
23 555 (1992). In particular, plaintiffs here face an imminent
24 risk that their identifying and sensitive health information
25 will be disclosed today because of the subpoena. In the

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1 Supreme Court's case of *Susan B. Anthony List v. Driehaus*, 573
2 U.S. 149, the Supreme Court there found that a certainly
3 impending injury satisfies the imminence requirement for
4 establishing an injury-in-fact.

5 So moving away from the jurisdictional issues to the
6 framework for resolving a TRO, I begin with the question of
7 likelihood of success. And I'll turn first to plaintiffs'
8 arguments under the Fifth Amendment.

9 To determine whether a constitutional violation has
10 occurred, the Court must first identify the rights at stake.
11 One case for this is *Hancock v. County of Rensselaer*, 882 F.3d
12 58 (2d Cir. 2018).

13 The plaintiffs here are identifying two distinct
14 informational privacy rights: First, medical information; and
15 second, information relating to one's transgender status. And
16 in the Second Circuit's decision of *Powell v. Schriver*, 175
17 F.3d 107 (2d Cir. 1999), the circuit described it is beyond
18 debate that for persons who wish to preserve privacy in the
19 matter, transgender status is excruciatingly private.
20 Plaintiffs have thus successfully identified a constitutional
21 privacy right.

22 So in this setting, the constitutional violation
23 occurs when the individual's interest in privacy outweighs the
24 government's interest in breaching it, quoting again from
25 *Hancock*. And where the government is acting in an executive

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1 capacity, courts consider whether the action was so arbitrary
2 as to shock the conscience. *Hancock* speaks to this, and it in
3 turn cites *O'Connor v. Pierson*, 426 F.3d 187 (2d Cir. 2005).

4 *O'Connor* goes on to note that mere irrationality is
5 not enough. Only the most egregious official conduct will
6 subject the government to liability for a substantive due
7 process violation based on executive action. A court applying
8 a shocks-the-conscience test must always examine the Executive
9 Branch's interest in breaching that privacy; and the stronger
10 the individual interest, the more compelling the government
11 actor's reasons must be.

12 Again, and for the next few passages, I am quoting
13 from the *Hancock* decision: Courts apply a balancing test to
14 the government's collection or publication of private personal
15 information that is constitutionally protected. And here, the
16 focus of the inquiry is on the government's interest in the
17 information contained in the records and the manner in which
18 those interests might be achieved, as well as the strength of
19 the individual interest in privacy, and that adjusts how
20 closely courts must scrutinize the government's offered
21 justifications.

22 Here, I find that the balancing test favors
23 plaintiffs' privacy interests.

24 First, the scope of information sought by the
25 government here, which includes medical assessments, diagnoses,

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1 informed consent records, and revelation of plaintiffs'
2 transgender status, is significant. This level of detail
3 places the information among the most personal and sensitive a
4 medical provider can hold and squarely within the class of
5 intimate material, warranting the strongest constitutional
6 protection. I'm quoting here from a decision of the Eastern
7 District of Pennsylvania: *In re: Subpoena No. 25-1431-014*,
8 810 F. Supp. 3d 555.

9 As discussed above, the Court finds that even the
10 provision of anonymized data would lead to the same result.

11 Second, the problem is compounded by the absence of
12 adequate safeguards to prevent further disclosure of
13 plaintiffs' private information. As I mentioned, I am
14 sensitive to the requirements of Rule 6(e); and yet that rule
15 contains numerous exceptions permitting enter and intra
16 governmental dissemination of this information. And this
17 absence of meaningful protection favors plaintiffs' privacy
18 interests. Indeed, the government concedes to having worked
19 with officials in Texas, where gender-affirming medical care
20 for minors is banned, to establish detransition clinics. These
21 were discussed at page 67 of the transcript.

22 Turning to the countervailing government interest, I
23 note that the strength of plaintiffs' interest in privacy,
24 which is significant here, adjusts how closely I must
25 scrutinize the government's offered justifications.

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1 I recognize and respect the government's interest in
2 carrying out criminal investigations using the grand jury's
3 subpoena power. I also reject plaintiffs' attempt to seek what
4 amounts to be an adverse inference based merely on the
5 government's invocation of Rule 6(e). That said, the context
6 surrounding this subpoena, including the various statements
7 made by executive officers, the recent spate of similar and
8 failed administrative subpoenas, the timeline that is before
9 me, leaves me at pains to understand the precise nature of the
10 government's interest and how any legitimate government
11 interest would be served by the disclosure now sought.

12 Put someone differently, because I cannot conceive of
13 a crime that would require the breadth of disclosure sought in
14 the subpoena, identifying and sensitive medical information for
15 an entire class of people for a six-year period, I have to find
16 that the government's interest does not outweigh the
17 plaintiffs' interest in privacy. I also note that even were
18 the government to articulate a cognizable and legitimate
19 interest in the information it seeks, it would not overcome
20 plaintiffs' strong privacy interest. That's made clear by the
21 Second Circuit's *Hancock* decision.

22 In sum, the individual's interest in privacy outweighs
23 the government's interest in breaching it. The enormous scope
24 of information sought and the absence of necessary guardrails
25 outweighs the ill-defined government's interest. The subpoena,

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1 expressly targeting members of a particular and uniquely
2 vulnerable group, both shocks the conscience and rises to the
3 level of the most egregious official conduct under the *O'Connor*
4 case.

5 I turn now to the parties' arguments under the Fourth
6 Amendment.

7 Once again, I know that the parties are aware of the
8 standards, but the Fourth Amendment's protections apply to the
9 grand jury, which is without power to invade a legitimate
10 privacy interest protected by the Fourth Amendment. The
11 *Calandra* decision, *United States v. Calandra*, 414 U.S. 338
12 (1974), is at issue here – it is discussed by the parties
13 yesterday; as well, the case of *Trump v. Vance*, 480 F. Supp. 3d
14 460, a Southern District of New York decision that was affirmed
15 by the Second Circuit in 977 F.3d 198.

16 Demands for information through a *subpoena duces tecum*
17 may constitute a search forbidden by the Fourth Amendment if
18 the terms are unreasonable. That's recognized in the Second
19 Circuit's 1973 decision in *In Re: Horowitz*, 482 F.2d 72. It is
20 quoting *Hale v. Henkel*, 201 U.S. 43 (1906). Whether a
21 particular intrusion is reasonable is measured in objective
22 terms by examining the totality of the circumstances. I'm
23 quoting here from *Ohio v. Robinette*, 519 U.S. 33 (1996).

24 And this requires balancing the need to search against
25 the invasion which the search entails. Quoting here from *New*

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1 *Jersey v. T.L.O.*, 469 U.S. 325 (1985); and later on, a
2 contextualized reasonableness analysis seeks to balance the
3 intrusion on privacy caused by law enforcement against the
4 justification asserted for it by the government. Quoting here
5 from *Caldarola v. County of Westchester*, 343 F.3d 570 (2d Cir.
6 2003).

7 Whether such an intrusion is reasonable depends on the
8 context, including the nature, purposes, and scope of the
9 inquiry. There are many cases for this proposition. One is
10 *Oklahoma Press Publishing Company v. Walling*, 327 U.S. 186. A
11 subpoena that is irrelevant, abusive or harassing, overly vague
12 or excessively broad is unreasonable. Quoting here from the
13 Fourth Circuit's 2007 decision in *In Re: Grand Jury, John Doe*
14 *No. G.J.2005-2*, 478 F.3d 581.

15 Plaintiffs allege – returning to this case – that the
16 government's subpoena constitutes an unjustifiable intrusion
17 into their reasonable expectation of privacy under the Fourth
18 Amendment. And I find that on this record the claim is likely
19 to succeed. Specifically, I find that plaintiffs and members
20 of the proposed class and NYU subclass have an objectively
21 reasonable expectation of privacy in the sensitive medical
22 records that the government's subpoena seeks.

23 During oral argument, the government acknowledged this
24 point explicitly at pages 68 and 69 of the transcript. And
25 federal and state law, including HIPAA and New York's Shield

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1 Law enshrine this privacy right. And that's discussed at the
2 plaintiffs' brief at page 20.

3 Further, in an analogous context, the Supreme Court
4 has recognized that the patients have an objectively reasonable
5 expectation of privacy in their medical records, even where
6 held by a hospital. In *Ferguson v. City of Charleston*, 532
7 U.S. 67 (2001), the Court held that where the government
8 conducts a warrantless search of such records, the plaintiffs
9 do not consent to that search, and the government's primary
10 purpose is to generate evidence for law enforcement purposes,
11 the plaintiffs have an objectively reasonable expectation of
12 privacy in their medical records, and the government must get a
13 warrant to search the information.

14 Such is the case here.

15 Plaintiffs' disclosure of their sensitive health
16 information to their physicians does not constitute a waiver of
17 their privacy rights, and the government's subpoena does not
18 overcome those privacy rights. Nor, for that matter, am I
19 satisfied that NYU could adequately anonymize the health
20 records to protect plaintiffs' privacy rights. As NYU's
21 counsel acknowledged during oral argument, given the voluminous
22 nature of the records and the ubiquity of personal identifying
23 information therein, it is impossible to guarantee
24 anonymization of plaintiffs' identities.

25 Finally, I'm persuaded by plaintiffs' argument that

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1 the reasoning in *United States v. Carpenter*, 585 U.S. 296
2 (2018), applies to this case. *Carpenter* held that an
3 individual maintains a reasonable expectation of privacy in his
4 cell site location information – even though such information
5 is held by a third party – because the information provides an
6 intimate window into a person's life, revealing not only his
7 particular movements, but through them his familial, political,
8 professional, religious, and sexual associations. I am quoting
9 from page 311 of that decision. And as the Supreme Court
10 explained on that same page, such location records hold for
11 many Americans the privacies of life.

12 Now, I acknowledge that lower courts have declined to
13 extend *Carpenter* in technological contexts beyond the
14 collection of cell site location information. Nonetheless, I
15 find *Carpenter's* reasoning directly applicable to the unique
16 circumstances here.

17 The records that the government's subpoena seeks – six
18 years of aggregated treatment history, diagnoses, family
19 information, and intimate personal detail – are precisely the
20 kinds of privacies of life contemplated in *Carpenter*. Of
21 course, in *Carpenter* – and the government noted this
22 yesterday – the Supreme Court was careful to recognize the
23 unique nature of cell phone location records. But as counsel
24 repeatedly emphasized at oral argument – both sides said this –
25 the government's subpoena in this case is also unique, the

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1 facts of this case are also unique, and the subpoena seeks
2 information that would allow the government to compile a
3 sweeping profile of plaintiffs.

4 So in light of the government's acknowledgment that
5 plaintiffs have an objectively reasonable expectation of
6 privacy in this information, the statutory enshrinement of
7 these privacy rights, and cases such as *Ferguson* and *Carpenter*,
8 I find that plaintiffs have shown that they are likely to
9 succeed in demonstrating a Fourth Amendment violation.

10 On the New York CPLR Section 4504 claim, it's not
11 clear to me that plaintiffs will be likely to succeed on those
12 merits, in particular because I think that state privilege law
13 might not govern where a federal criminal subpoena compels
14 disclosure. So while I am finding a likelihood of success on
15 the Fourth and Fifth Amendment claims, I am not finding one on
16 the state law claims.

17 I turn now to the other TRO factors.

18 The plaintiffs have amply demonstrated the threat of
19 irreparable harm absent relief. They have shown that they're
20 threatened with imminent violation of their constitutional
21 rights in the absence of preliminary relief. That's a quote
22 from the case of *Airbnb, Incorporated v. City of New York*, 373
23 F. Supp. 3d 467 (S.D.N.Y. 2019). And that showing suffices for
24 purpose of a TRO, as the Second Circuit recognized in *Mitchell*
25 *v. Cuomo*, 748 F.2d 804 (2d Cir. 1984).

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1 Specifically, plaintiffs in this case sought
2 gender-affirming treatment under a reasonable assumption of
3 absolute privacy. If not enjoined, the subpoena would allow
4 the government to obtain and disclose the most intimate details
5 about plaintiffs' medical histories and personal lives – in
6 particular, their transgender status. It would risk all manner
7 of irreparable harm, including by inflicting deep emotional
8 harm, destroying trust in medical care, and spreading damage to
9 families, peers, and others. I'm quoting from *In re: Subpoena*
10 *No. 25-1431-014*, the Eastern District of Pennsylvania decision
11 reported at 810 F. Supp. 3d 555.

12 The injuries that I've just identified inhere in –
13 and, indeed, appear to be the purpose of – the government's
14 acquisition of plaintiffs' identifying and sensitive
15 information, they are not limited to the possibility of public
16 disclosure, even if the latter would exacerbate the harm.

17 The government, for its part, insists that the secrecy
18 of grand jury proceedings renders concerns about the use and
19 disclosure of patient information, a remote, speculative
20 possibility. But it could offer the Court few assurances at
21 yesterday's hearing that the requested records would not be
22 used to harm plaintiffs.

23 For example, there was no promise that the records
24 would not be used to prosecute the parents of the patients or
25 the doctors who facilitated treatment. And there was some back

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1 and forth as to whether the minor plaintiffs would themselves
2 face prosecution. I'm hard-pressed for reasons to rely on the
3 government's representations that even the patients would not
4 be prosecuted, especially given the inability to comment on any
5 aspect of the alleged investigation or the subpoena.

6 Turning now to the balance of equities and the public
7 interest. They are analyzed together because, as I mentioned,
8 the government is a party to the case. They weigh in favor of
9 relief.

10 In the Southern District decision of *Coronel v.*
11 *Decker*, 449 F. Supp. 3d 274 (S.D.N.Y. 2020), the Court found
12 that where a grievous constitutional violation is alleged, the
13 public interest is best served by ensuring the constitutional
14 rights of persons within the United States are upheld.

15 Here, the acquisition and disclosure of plaintiffs'
16 identifying and sensitive personal information raise serious
17 constitutional issues, especially the irreversible revelation
18 of their highly intimate information to the government. The
19 equities thus weigh in favor of temporarily protecting
20 plaintiffs from such disclosure while these legal issues are
21 worked out.

22 So having determined that plaintiffs are likely to
23 succeed on the merits of their Fifth and Fourth Amendment
24 claims, that they've sufficiently demonstrated irreparable
25 harm, and that the balance of equities and public interest tip

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1 in their favor, I find that plaintiffs are entitled to
2 preliminary injunctive relief.

3 The next and, I believe, final question before me is
4 the scope of that relief. And on that question, I
5 provisionally certify plaintiffs' proposed class and NYU
6 subclass, and grant classwide declaratory and injunctive
7 relief.

8 Let me begin.

9 It is well-established that certain circumstances give
10 rise to the need for prompt injunctive relief for a named
11 plaintiff or on behalf of a class, and that the court may
12 conditionally certify the class or otherwise award a broad
13 preliminary injunction without a formal class ruling under its
14 general equity powers. I'm quoting from the Southern District
15 2012 decision in *Strouchler v. Shah*, 891 F. Supp. 2d 504.

16 Last year in *AARP v. Trump*, 605 U.S. 91, the Supreme
17 Court confirmed that courts may issue temporary relief to a
18 putative class, recognizing that exigent circumstances may
19 impose practical constraints, and that preliminary relief is
20 customarily granted on the basis of procedures that are less
21 formal and evidence that is less complete than in a civil trial
22 on the merits. I'm quoting from pages 96 and 98 of that
23 decision. And, the Supreme Court reasoned, the purpose of such
24 relief is merely to preserve the relative positions of the
25 parties pending further proceedings. This is from page 96.

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1 In this Court's estimation, the Supreme Court's
2 slightly more recent decision in *Trump v. CASA Inc.*, 606 U.S.
3 831, does not change or does not modify the district court's
4 authority to issue provisional class certification and to grant
5 classwide temporary relief.

6 As Judge McMahon in this district explained in
7 *American Council of Learned Societies v. McDonald*, 792 F. Supp.
8 3d 448, CASA counsels us – and I'm quoting from her – that
9 limited preliminary relief for a purported but still defined
10 class of individuals is not the type of relief prohibiting the
11 enforcement of a law or policy against anyone to which the
12 decision in CASA applied.

13 Indeed, preliminary injunctive relief that relates
14 solely to the pleaded classes is not broader than necessary to
15 provide complete relief to each plaintiff with standing to sue.

16 At oral argument, the government may have misperceived
17 the Supreme Court's obvious disfavor of universal or nationwide
18 injunctions, and what is believed to be that particular
19 procedural posture's circumvention of Rule 23's procedural
20 protections in CASA to disallow any preliminary classwide
21 relief.

22 Let me try that again.

23 I do think that the government overstated or
24 misunderstood what the Supreme Court was complaining about in
25 CASA. And in my mind, they were complaining about the

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1 nationwide injunction and not about class action. Because in
2 CASA, the Supreme Court specifically condemned universal
3 injunctions as a class action workaround at page 850 of the
4 decision. And they even asked the rhetorical question: Why
5 bother with a Rule 23 class action when the quick fix of a
6 universal injunction is on the table?

7 The government agreed that the plaintiffs need to make
8 a Rule 23 showing to obtain classwide relief, and that is what
9 plaintiffs have tried to do in this case. My role as a
10 district judge is to evaluate whether they had made a
11 sufficient showing to satisfy the requirements of Rule 23 and
12 warrant preliminary classwide relief.

13 And, ultimately, I find that they have made such a
14 showing on a preliminary basis. The proposed class and NYU
15 subclass are likely to satisfy the Rule 23(a) requirements of
16 numerosity, with well over 40 minor patients who sought
17 gender-affirming medical care at NYU Langone alone;
18 commonality, including common injuries arising from the
19 imminent disclosure of identifying and sensitive health
20 information; typicality, as plaintiffs' claims are typical of
21 the proposed class and NYU subclass, especially given that the
22 claims arise from the same course of conduct; and adequacy
23 where there is no fundamental conflict between the named
24 plaintiffs and other members of the putative classes – class
25 and subclass; and where plaintiffs can't fairly and adequately

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1 protect the interests of the class and subclass.

2 In addition, plaintiffs' proposed class and NYU
3 subclass appear to meet the Second Circuit's additional
4 requirement of ascertainability, because membership can be
5 clearly and objectively ascertained based on information
6 regarding specific, defined forms of medical care received
7 during a discrete time period from healthcare entities within a
8 discrete geographic location. The ascertainability requirement
9 is discussed in cases including *In re Petrobras Securities*, 862
10 F.3d 250 (2d Cir. 2017).

11 Let me also note that plaintiffs' proposed class and
12 subclass very likely satisfy Rule 23(b)(2). And central to a
13 (b)(2) class – and I'll quote here – The indivisible nature of
14 the injunctive or declaratory remedy warranted – the notion
15 that the conduct is such that it can be enjoined or declared
16 unlawful only as to the all of the class members or as to none
17 of them. The quote here is from *Wal-Mart Stores Incorporated*
18 *v. Dukes*, 564 U.S. 338 (2011).

19 Here, I find that provisional certification under
20 23(b)(2) is particularly suitable because defendants' conduct
21 applies generally to the class members and would injure the
22 class members in the same way, and because plaintiffs seek a
23 uniform remedy to enjoin what they have described as
24 defendants' unlawful conduct.

25 In conclusion, the Court is granting plaintiffs'

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1 application for a TRO, and their motion for provisional
2 certification of the class and the NYU subclass.

3 Let me talk to the parties now about housekeeping
4 measures going forward.

5 Given the 14-day timeline of the TRO, it is my
6 intention to set Wednesday, July 8th, as the date of the
7 preliminary injunction hearing. But I did want the parties to
8 speak about that.

9 For example, if the parties need more time because of
10 discovery or need less time or have decided that they have
11 given me all of their best arguments and there is no reason for
12 an additional hearing, I want to know. But I did want to give
13 everyone a chance to sit with this decision and think about
14 what options make the most sense for your clients.

15 So what I will ask is if I could have a letter by the
16 end of the day on Friday, joint letter from the parties,
17 telling me what their pleasure is with respect to additional
18 discovery or motion practice or briefing. And I will endorse
19 it if it is reasonable.

20 I am also terminating the motion that is pending at
21 docket entry 16 because it's been resolved by this decision.

22 To my friends at the plaintiffs' table, that is my
23 decision. Is there anything I have neglected to do,
24 Mr. Strangio?

25 MR. STRANGIO: No, your Honor. We thank the Court for

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1 the thorough decision and expedited resolution of the TRO. And
2 we will get that letter to the Court by the end of the day on
3 Friday.

4 THE COURT: I thank you so much.

5 Mr. Miller, from the DOJ's perspective, is there
6 anything I've forgotten to do?

7 MR. MILLER: Nothing further, your Honor. Thank you.

8 THE COURT: I thank you so much.

9 All right. And Mr. Cunha, last, but never least, sir,
10 is there anything that you would like me to do that I have
11 failed to do?

12 MR. CUNHA: Much appreciated. No, your Honor.

13 THE COURT: All right. With that, I know you have
14 better things to do than listen to me read another decision, so
15 I will let you go with my deep thanks. And I look forward to
16 hearing from you all on Friday.

17 Take care, everyone. Thank you.

18 * * *