IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BLUESKY POSTER 1, *et al.*,

Plaintiffs,

v.

JEANINE PIRRO, *et al.*,

Defendants.

~~**FILED UNDER SEAL PURSUANT TO LCrR 6.1**~~

No. 26-cv-04054 (JEB)

PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION AND PROVISIONAL CLASS CERTIFICATION

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PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Pursuant to Federal Rules of Civil Procedure 65 and 23 and Local Civil Rules 65.1 and 23.1, Plaintiffs Bluesky Poster 1, Bluesky Poster 2, Instagram Poster, and X Poster respectfully move for a preliminary injunction on behalf of themselves and members of the proposed Investigation 18 Class, as defined in Plaintiffs' concurrently filed motion for class certification. Because counsel had not yet appeared on behalf of Defendants at the time of filing, Plaintiffs' counsel was unable to seek Defendants' position on this Motion pursuant to Local Civil Rule 7(m).

INTRODUCTION

Plaintiffs are ordinary Americans who, like millions of others, express their views anonymously on social media. They pose no threat to society and have not posted anything that could plausibly form the basis of a good-faith criminal investigation. Yet the federal government has demanded that social media companies turn over their personal information as part of a dragnet grand jury investigation seeking to unmask anonymous speakers who criticize the federal government online.

The investigation—which the U.S. Attorney's Office refers to as USAO #[redacted]18 (hereinafter "Investigation 18")—is a bad-faith fishing expedition initiated to gather intrusive intelligence and facilitate retaliation against dissenters. Given grand jury secrecy requirements, the sealed nature of grand jury proceedings, and the absence of notice requirements when someone is targeted by a grand jury subpoena, the full scope of Investigation 18 remains unknown. However, Investigation 18 has included at least dozens of grand jury subpoenas issued by Special Assistant U.S. Attorneys to unmask anonymous speakers and provide their personal information to the Immigration and Customs Enforcement's (ICE's) Homeland Security Investigations team (HSI), based on First Amendment-protected, nonthreatening, non-harassing speech.

Plaintiffs often post anonymously on social media and sometimes criticize the federal government. Grand jury subpoenas GJ20261020148046, GJ20261016147860, GJ20260615143480, and GJ20260925146982 were issued to the social media companies on whose platforms they post, seeking to unmask their identities as part of Investigation 18. Plaintiffs now move to preliminarily enjoin Defendants from pursuing their bad-faith investigation, including by compelling compliance with subpoenas that issued as part of Investigation 18 or issuing additional retaliatory subpoenas to unmask Plaintiffs and similarly situated individuals who have been or will be targeted in Investigation 18.

STATEMENT OF FACTS

A. Defendants use administrative subpoenas to identify their critics.

The *Wall Street Journal* recently reported that "ICE has deployed a round-the-clock digital dragnet to scour the public Internet—from Facebook to Instagram to X—for speech that could endanger the agency's mission."[1] As part of this initiative, DHS "has sent hundreds of subpoenas to social-media companies" to unmask the social media users—often targeting those critical of ICE.[2]

For example, on September 11, 2025, DHS sent administrative subpoenas to Meta to unmask users associated with accounts that aim to spread awareness of immigration enforcement activity in Pennsylvania. The subpoenas cited a federal customs statute, 19 U.S.C. § 1509, as their authority, despite no indication that the investigation was related to imports, exports, or anything within the statute's reach. Users moved to quash, arguing that the subpoenas violated the First Amendment and exceeded DHS's statutory authority. The court held an oral argument at which it

[1] Hannah Critchfield & Shane Shifflett, *How ICE Is Weaponizing Social Media Against Its Critics*, Wall Street J. (Aug. 3, 2026), https://perma.cc/5B9A-X77M.
[2] *Id.*

expressed skepticism about DHS's subpoenas. *See* Tr. 13:3-15:9, 41:14-43:15, *Doe v. DHS*, 3:25-mc-80325 (N.D. Cal. Jan. 28, 2026), ECF 35.[3] Shortly thereafter, DHS withdrew the subpoenas. *See* Notice of Withdrawal of Summons, *Doe v. DHS*, 3:25-mc-80325 (N.D. Cal. Jan. 21, 2026), ECF 34.

Similarly, on September 4, 2025, DHS sent an administrative subpoena to Meta seeking information about six accounts that documented immigration law enforcement activity in California. Users challenged the subpoena on statutory and First Amendment grounds. *See Doe v. DHS*, 3:25-mc-80286 (N.D. Cal. Dec. 9, 2025); *In the Matter of the Subpoena Number FY25-ELC-0105*, 3:25-mc-80284 (N.D. Cal. Dec. 9, 2025); *LBRRN v. DHS*, 3:25-mc-80288 (N.D. Cal. Sept. 19, 2025). The subpoena cited 8 U.S.C. § 1225(d) as its authority, but that statute does not permit the use of subpoenas to reveal the identities of unknown third parties. *See* Mot. to Quash at 16–17, *Doe v. DHS*, 3:25-mc-80286, ECF 1. Nor does it permit the issuance of administrative subpoenas to investigate alleged officer safety concerns or doxing—the two purposes referenced in the subpoena. *See id.* at 17–18. Rather than defend the subpoena in court, DHS withdrew it. *See* Order at 2, *Doe v. DHS*, 3:25-mc-80286, ECF 21.

Likewise, on October 30, 2025, DHS sent Google an administrative subpoena seeking information about a retiree who sent an email via Gmail to a DHS prosecutor criticizing his handling of an asylum case. The user challenged the subpoena on statutory and First Amendment grounds. DHS withdrew the subpoena rather than defending it in court. *See* Notice of Voluntary Dismissal Pursuant to Rule 41(a)(1)(A)(i), *Doe v. DHS*, 5:26-mc-80026 (N.D. Cal.), ECF 8-1.[4]

[3] *See also* Joseph Menn, *ICE And Activists Clash Over Doxing and Privacy, in Court and Streets*, Wash. Post (Jan 15, 2026), https://perma.cc/W7NC-4TAS.
[4] *See also* John Woodrow Cox, *Homeland Security is Targeting Americans with this Secretive Legal Weapon*, Wash. Post (Feb. 3, 2026), https://perma.cc/SRZ3-84SX.

In late 2025, after DHS sent Reddit administrative subpoenas seeking information about "11 Reddit accounts that posted content critical of ICE actions," and Reddit objected on First Amendment grounds, DHS withdrew the subpoenas.[5] Other technology companies, too, have privately pushed back on these administrative subpoenas when they do not appear to comply with their authorizing statutes.[6]

B. Facing pushback to DHS's administrative subpoena powers, Defendants shift to grand jury subpoenas to accomplish the same ends.

Recently, after DHS has withdrawn administrative subpoenas, grand jury subpoenas have issued seeking similar records.[7] On February 19, 2026, DHS sent an administrative subpoena to Reddit seeking information about the user account "Tired_Thumb." After the user challenged the subpoena on statutory and First Amendment grounds, DHS withdrew it. *See Doe v. DHS*, 26-mc-80074 (N.D. Cal. Mar. 30, 2026), ECF 9. But days later, a grand jury subpoena issued to Reddit seeking similar information about the same account.[8]

Similarly, on February 27, 2026, DHS sent an administrative subpoena to X seeking information about the "podslurp" account, which made a sarcastic post about donating to the ICE officer who reportedly shot Renée Good in Minneapolis and posted address information that was circulating widely on social media at the time. *See Podslurp v. DHS*, 1:26-mc-00861 (W.D. Texas

[5] *See* Reddit, *Transparency Report: July to December 2025*, https://perma.cc/2XRS-9WZP. In one case in early 2025, DHS reportedly withdrew an administrative subpoena asking for "information for a Reddit account" after Reddit simply followed up for more information. *See* Reddit, *Transparency Report: January to June 2025*, https://perma.cc/W76V-BBUT.

[6] Emily Glazer, Georgia Wells & Hannah Critchfield, *Tech Giants Ramp Up Resistance to ICE in Bid to Avoid Democratic Scrutiny*, Wall Street Journal (Oct. 28, 2026), https://perma.cc/ZV7A-QFPS.

[7] *See, e.g.*, Critchfield & Shifflett, *supra* note 1; Jimmy Jenkins & Zoe Tillman, *The DOJ Wants to Know Who on Reddit and X Is Criticizing ICE's Tactics*, Bloomberg (May 28, 2026), https://perma.cc/PF52-8J2P.

[8] *See* Critchfield & Shifflett, *supra* note 1.

Aug. 20, 2026). In May 2026, DHS withdrew the administrative subpoena.[9] The government then issued a grand jury subpoena to X seeking similar information about the same account.[10]

According to Reddit's transparency report, between January and June 2026, the company pushed back on "four federal grand jury subpoenas involving content related to ICE actions because the users appeared to be engaged in protected activity under the First Amendment."[11]

C. Defendants use Investigation 18 grand jury subpoenas to attempt to unmask Plaintiffs and other anonymous speakers.

In the last several months, Defendants have requested at least dozens of grand jury subpoenas citing Investigation 18 to unmask users critical of the Administration's immigration enforcement practices. Wessler Decl. ¶¶ 3–5. Plaintiffs in this case are among the anonymous users whose identifying information is being sought as part of Investigation 18. Brief summaries regarding each Plaintiff are provided here, with additional details incorporated into the Argument section.

Bluesky Poster 1 is a parent who often expresses political views on the social media platform Bluesky. Bluesky Poster 1 Decl. ¶¶ 2, 3. Bluesky Poster 1 posts anonymously, as do many Bluesky users. *Id.* ¶ 4. On October 27, 2026, Bluesky Poster 1 got an email from Bluesky saying law enforcement had requested information about their account. Follansbee Decl. Ex. A. Bluesky Poster 1 first thought the notice was a scam and could not be legitimate, because Bluesky Poster 1 had not posted anything that would give law enforcement reason to investigate their account. Bluesky Poster 1 Decl. ¶ 7. But in fact, Bluesky had received a grand jury subpoena demanding that Bluesky produce Bluesky Poster 1's subscriber information as of October 8, 2026—on which date Bluesky Poster 1 had replied to another user's post about an article from The Intercept titled

[9] *See* Jenkins & Tillman, *supra* note 7.
[10] *Id.*
[11] Reddit, *Transparency Report: January to June 2026*, https://perma.cc/SD5P-LMJ8.

"ICE Agent on Scene of NYC Shooting Was Posing as Construction Worker, Eyewitness Says," with, "Burn ICE to the ground. Burn DHS to the ground. Salt the earth." *Id.* ¶¶ 9, 11, 13. Bluesky Poster 1 also made several other posts that day, including "Fuck you, McMuffin," in response to another user who posted a newsclip and said "Markwayne Mullin on the Twin Cities: 'They're gonna have to ask President Trump for help, and if they do, we can come up and we can clean that city up in no time, but they're gonna have to admit they were wrong first.'" *Id.* ¶ 13. The subpoena cites Investigation 18 as its USAO Number. Follansbee Decl., Ex. B.

Bluesky has informed Bluesky Poster 1 that it must respond to the subpoena—meaning it will turn over Bluesky Poster 1's information to Defendants—on December 11, 2026, unless Bluesky Poster 1 files a legal challenge. Follansbee Decl., Ex. A.

Bluesky Poster 2 is a retired prosecutor who, like Bluesky Poster 1 and many others, expresses political views, including views highly critical of the Administration, anonymously on Bluesky. Bluesky Poster 2 Decl. ¶¶ 2, 19, 20, 22. On October 21, 2026, Bluesky Poster 2 received an email from Bluesky notifying them that law enforcement had requested information about their account. Follansbee Decl., Ex. C. After obtaining counsel, Bluesky Poster 2 was able to get a copy of the grand jury subpoena, which cites Investigation 18 and commands Bluesky to produce subscriber information for Bluesky Poster 2's account on October 6, 2026. *Id.*, Ex. D.

On October 6, 2026, Bluesky Poster 2 had watched a video posted by another Bluesky user showing law enforcement violently dragging a grandmother across rough ground. Bluesky Poster 2 Decl. ¶ 13. Bluesky Poster 2 replied to the video, "Fact: more than once in my childhood I wanted to 'kill' my brother and sister for annoying me (Mom, he's touching me). Now, as a senior citizen who pays attention, I want to kill ICE, the whole damn lot of them because of how they 'touch' humans, as seen in this video." *Id.* ¶ 16. Bluesky Poster 2 made a number of other posts on Bluesky

the same day. *Id.* ¶ 19. For example, they replied to a post about a statement by President Trump with: "Just another day in the life of the cruelest, most corrupt, treasonous individual to ever scorch the Earth." *Id.* In response to another user's post of a picture of President Trump standing up with his eyes closed with the caption, "White House lawyers warn midterm stress could seriously put Trump's health at risk," Bluesky Poster 2 replied, "He's resting his eyes. Not quite the deep sleep I hoped for." *Id.*

Bluesky has informed Bluesky Poster 2 that it must respond to the subpoena—meaning it will turn over Bluesky Poster 1's information to Defendants—on December 11, 2026, unless Bluesky Poster 1 files a legal challenge. Follansbee Decl., Ex. C.

Instagram Poster is U.S. citizen living in Europe who sometimes expresses political views on the social media platform Instagram, owned by Meta. Instagram Poster Decl. ¶ 5. Instagram Poster's social media content reflects that they live abroad. *See Id.* ¶ 20. For example, on May 18, 2026, Instagram Poster posted ". . . . Honestly, even I, as someone born and raised in the US and now living abroad, I find it a bit unnerving to deal with these people everytime I visit the US. My parents are both gone, and I still have close family there who I dearly miss. But I won't set foot in the country now as long as this fascist criminal regime and its Gestapo thuggery ICE are in charge." *Id.* On June 16, 2026, Instagram Poster commented, "In Switzerland 21 years with permanent residency and EU citizenship, I definitely consider myself an immigrant. I have no desire to go back and live in the US." *Id.* And on June 5, 2026, Instagram Poster wrote, "So happy I left the idiocracy that is the US 21 years ago." *Id.* ¶ 21.

Instagram Poster posts anonymously, as do many Instagram users. *Id.* ¶ 8. On July 29, 2026, Instagram Poster received an email from Meta notifying them that law enforcement had requested information about their Instagram account. Follansbee Decl., Ex. E. After obtaining

counsel, Instagram Poster was able to get a copy of the grand jury subpoena, which cites Investigation 18 and commands Meta to produce "[a]ll customer or subscriber account information for any and all accounts," including name and address, associated with Instagram Poster's Meta account on June 5, 2026. *Id.*, Ex. F; Instagram Poster Decl. ¶ 13.

Instagram Poster made a number of posts on Instagram on June 5, 2026, including: in reply to a post about religious patriarchy, "Once again, they show how insecure they are and threatened by strong, independent, and educated women. Being considered 'less marriageable' by these 'males' with their backwards ideas is a blessing. Keep showing us who you are so we can avoid you"; and in reply to a post about statements made by an executive of the technology company Oracle that future citizens will be on their best behavior because technology platforms constantly record and report what individuals are doing, "What does he consider errant behavior?" *Id.* ¶ 20. In another post, Instagram Poster commented on a video of an ICE agent violently attacking protesters with a baton. The comment read: "Looks like a rabid dog foaming at the mouth. Should be put down [water gun emoji]." *Id.* ¶ 18.

The subpoena for Instagram Poster's information directed Meta to produce the requested records by 9:00 AM on July 22, 2026. Follansbee Decl, Ex. F. Based on counsel's representation to Meta that it would challenge the subpoena, Meta agreed to temporarily delay production of Instagram Poster's information in response to the subpoena. Instagram Poster Decl. ¶ 13.

X Poster is a college student who primarily posts about soccer, but has occasionally posted political messages critical of ICE and President Trump. X Poster Decl. ¶¶ 4, 6, 7. X Poster posts anonymously, as do many X users. *Id.* ¶ 8. X emailed X Poster on October 13, 2026, stating that X received a grand jury subpoena seeking X Poster's account information. Follansbee Decl., Ex. G. The subpoena, which cites Investigation 18 and demands identifying information for X Poster

and other information associated with X Poster's account on September 11, 2026. *Id.*, Ex. H. X Poster's account does not show any posts or reposts from September 11, 2026, but X Poster has posted political content at other times, including in July 2026, when X Poster posted "fuck you" and tagged DHS, ICE, and President Trump. X Poster Decl. ¶ 7.

X originally informed X Poster that the company would produce the requested information by October 20, 2026. *Id.* ¶ 9. After X Poster requested that X delay producing the requested information so that X Poster could seek counsel, X confirmed they would withhold production until October 31, 2026. *Id.* ¶ 12. Upon request from counsel, X subsequently confirmed they would further delay production until November 16, 2026. *Id.* ¶ 13.

D. Defendants build a database of dissenters.

Defendants' rampant use of subpoenas to unmask critics of the federal government is occurring against the backdrop of repeated suggestions that Defendants are building a database of dissenters. In January 2026, Border Czar [redacted] announced on Fox News that he intended to create a database of people arrested for interfering, impeding, and assaulting ICE officers, to "make them famous," and "let their employers, in their neighborhoods, in their schools, know who these people are."[12] Shortly afterwards, an ICE agent who was taking pictures of a legal observer's car said he was doing so "because we have a nice little database, and now you're considered a domestic terrorist."[13] An internal January memo to Department of Homeland Security (DHS) agents in Minneapolis directed them to "capture all images, license plates, identifications, and general information on hotels, agitators, protestors, etc., so we can capture it all in one consolidated

[12] Ingraham Angle, [redacted] *Pushes to Create 'Database' to Make Those Who Impede ICE 'Famous'*, (Fox News, Jan. 15, 2026, at 03:50-04:29), https://www.foxnews.com/video/6387789141112.

[13] Autumn Billings, *Is the DHS Tracking ICE Critics? The Public Deserves Answers*, Reason (May 21, 2026), https://perma.cc/8FZR-GKMV; @kenklippenstein, X, (Jan. 23, 2026), https://perma.cc/24N8-R3HK.

form."[14] The agents were instructed to fill out a form titled "intel collection non-arrests" with protesters' personal information.[15] And records produced in response to a Freedom of Information Act request by USA Today reveal that ICE has, indeed, been keeping track of protesters in a secret database called the "Agitator Log."[16] Plaintiffs fear that they will be added to such a database if their information is disclosed to Defendants. *See, e.g.*, Bluesky Poster 1 Decl. ¶ 16; Bluesky Poster 2 Decl. ¶ 28; Instagram Poster Decl. ¶ 24.

ARGUMENT

This District has previously recognized that, if "the government could . . . subpoena any Web site any time any anonymous user made any post containing a mere scintilla of violence," then "[a]nonymity on the Internet would be sufficiently compromised to warrant this Court's concern." *In re Grand Jury Subpoena No. 11116275*, 846 F. Supp. 2d 1, 8 (D.D.C. 2012). Plaintiffs bring this motion to enjoin Investigation 18, which compromises constitutionally protected anonymity on the Internet by issuing grand jury subpoenas to unmask anonymous critics based on speech that cannot plausibly form the basis of a good-faith grand jury investigation. While the grand jury's subpoena power is broad, it "must operate within the limits of the First Amendment." *Branzburg v. Hayes*, 408 U.S. 665, 708 (1972). If compliance with a grand jury subpoena would violate a constitutional right, "[j]udicial supervision is properly exercised . . . to prevent the wrong before it occurs." *United States v. Calandra*, 414 U.S. 338, 346 (1974). Without preliminary relief

[14] Jeff Winter & Priscilla Alvarez, *Alex Pretti Broke Rib in Confrontation with Federal Agents a Week Before Death, Sources Say*, CNN (Jan. 27, 2026), https://perma.cc/5B9A-X77M.
[15] *Id.*
[16] Nick Penzenstadler, *'They Were Tracking Us.' ICE Tracks Protestors in Secret Database*, USA Today (Oct. 8, 2026), https://perma.cc/W9N3-SS8G.

from this Court, Plaintiffs and others targeted in Investigation 18 will suffer an irreparable loss of First Amendment freedoms.

To obtain a preliminary injunction, a party "must show that (1) it 'is likely to succeed on the merits'; (2) it 'is likely to suffer irreparable harm in the absence of preliminary relief'; (3) 'the balance of equities tips in [its] favor'; and (4) the issuance of a preliminary injunction 'is in the public interest.'" *Alpine Sec. Corp. v. Fin. Indus. Regul. Auth.*, 121 F.4th 1314, 1324 (D.C. Cir. 2024) (quoting *Changji Esquel Textile Co. v. Raimondo*, 40 F.4th 716, 721 (D.C. Cir. 2022)).

As set forth below, Plaintiffs satisfy all four factors and are therefore entitled to a preliminary injunction. Plaintiffs seek preliminary relief on behalf of both themselves and the proposed Investigation 18 class, as defined in their concurrently filed motion for class certification. Because they satisfy the standard for class certification for the reasons detailed in that motion, this Court should provisionally certify the class and issue the proposed preliminary relief classwide.

I. Plaintiffs are likely to succeed on the merits of their First Amendment claims.

The First Amendment prohibits the government from "marginalizing dissident voices and reshaping the marketplace of ideas to its pleasure" by "subtle . . . interference with protected liberties no less than . . . heavy-handed frontal attack[s]." *First Choice Women's Res. Ctrs., Inc. v. Davenport*, 608 U.S. 174, 197 (2026) (citation modified). The Supreme Court has long recognized that individuals may be dissuaded from exercising their First Amendment rights when doing so can lead to exposure of their identities. *See NAACP v. Alabama*, 357 U.S. 449, 462–63 (1958). The Court has thus "embraced a respected tradition of anonymity in the advocacy of political causes." *McIntyre v. Ohio Elections Com'n*, 514 U.S. 334, 343 (1995) (footnote omitted). For example, in *Talley v. California*, the Court held unconstitutional an ordinance barring handbills that did not display their sponsors' identifying information. 362 U.S. 60, 63–64 (1960). In *McIntyre*, the Court upheld the right to distribute anonymous campaign literature. 514 U.S. at 357.

In *Buckley v. American Constitutional Law Foundation, Inc.*, the Court held that Colorado could not require petition circulators to wear name badges. 525 U.S. 182, 200 (1999). And in *Watchtower Bible and Tract Society of New York v. Village of Stratton*, the Court held unconstitutional an ordinance prohibiting door-to-door advocacy without registration and a permit. 536 U.S. 150, 153, 164 (2002).

Such cases teach not only that anonymity has played an "important role in the progress of mankind," but also that the government cannot "compel members of groups engaged in the dissemination of ideas to be publicly identified" when "identification and fear of reprisal might deter perfectly peaceful discussions of public matters of importance." *Talley*, 362 U.S. at 64–65 (citing *Bates v. City of Little Rock*, 361 U.S. 516, 516 (1960), and *NAACP v. Alabama*, 357 U.S. at 462). That rings just as true online as in print. *See Reno v. ACLU*, 521 U.S. 844, 870 (1997) (finding "no basis for qualifying the level of First [A]mendment scrutiny [] applied to" the internet).

Investigation 18 exists precisely to gather intrusive intelligence on anonymous speakers who disseminate viewpoints online that are critical of the federal government's immigration enforcement efforts. While there is no "fixed and exhaustive list" of improper purposes for a grand jury investigation or subpoena, *In re Grand Jury Subpoenas Nos. [Redacted] & [Redacted]*, 823 F. Supp. 3d 1, 9–10 (D.D.C. 2026), *reconsideration denied,* No. MC 26-12 (JEB), 2026 WL 1224046 (D.D.C. Apr. 3, 2026), a purpose of unmasking anonymous government critics surely qualifies, *see id.* at 8–9 (noting that "prosecutors may not use the grand jury 'to engage in arbitrary fishing expeditions' or to 'select targets of investigation out of malice or an intent to harass'" or "to demand details that are irrelevant to the crime under investigation but that would chill a target's

First Amendment rights." (quoting *United States v. R. Enters., Inc.*, 498 U.S. 292, 299 (1991) and *Ealy v. Littlejohn*, 569 F.2d 219, 227–30 (5th Cir. 1978))).

Additionally, a government act constitutes retaliation if "(1) [the plaintiff] engaged in conduct protected under the First Amendment; (2) the defendant took some retaliatory action sufficient to deter a person of ordinary firmness in [their] position from speaking again; and (3) a causal link [exists] between the exercise of a constitutional right and the adverse action taken against." *Media Matters for Am. v. Paxton*, 138 F.4th 563, 584 (D.C. Cir. 2025).

As explained in Section I.A below, Investigation 18 must be enjoined both because it is conducted in bad faith for an improper, retaliatory purpose, and because—for largely the same reasons—it satisfies this Circuit's First Amendment retaliation test.

As explained in Section I.B below, Investigation 18 also suffers from an additional, independent constitutional flaw: it intrudes on Plaintiffs' First Amendment right to speak anonymously by seeking to unmask anonymous speakers without a compelling need for their identifying information. In order to preserve Plaintiffs' and class members' right to speak anonymously online, Defendants must be enjoined from issuing and compelling compliance with grand jury subpoenas to unmask Plaintiffs and class members without first making a prima facie showing to the judge overseeing the grand jury that the anonymous speaker committed a crime.

A. Investigation 18 is a bad-faith investigation being conducted for improper and retaliatory purposes.

1. The evidence of improper and retaliatory purpose is overwhelming.

Overwhelming evidence indicates that Investigation 18 is being conducted in bad faith, and that it is a vehicle to issue grand jury subpoenas for an improper, retaliatory purpose. At least 35 (and likely many more) grand jury subpoenas have issued under Investigation 18, Wessler Decl. ¶¶ 4–5, each seeking to unmask an anonymous speaker who has criticized the federal government

on social media. The anonymous speakers who have been targeted thus far appear to be unrelated to each other, with just one characteristic linking them: they are critics of the Administration's immigration enforcement efforts. Many of these grand jury subpoenas are issued by the same Special Assistant to the U.S. Attorney, and many direct that records be delivered to DHS HSI. Reeder Decl. ¶¶ 9, 12.

The subpoenas list a date on which a user's social media account activity triggered the government's investigatory interest. That date—for Bluesky Poster 1, Bluesky Poster 2, and Instagram Poster—corresponds to a post where the Plaintiff expressed views critical of ICE. Bluesky Poster 1 Decl. ¶ 13; Bluesky Poster 2 Decl. ¶ 12; Instagram Poster Decl. ¶ 15. The subpoenas self-evidently seek to unmask Plaintiffs because of their speech on that date. While X Poster had not posted anything on the date of interest listed in the subpoena for their information, they have posted criticism of DHS and the Administration at other times. X Poster Decl. ¶ 7. For example, in July 2026, X Poster posted "fuck you" and tagged DHS, ICE, and President Trump. *Id.* X Poster was apparently swept up in this fishing expedition because X Poster was perceived—even if incorrectly—to have criticized the Administration on the date of interest in the subpoena. Given the likelihood that Defendants are using artificial intelligence tools to find the accounts of ICE critics, and the sheer volume of subpoenas issuing as part of Investigation 18, it is no surprise that some of the subpoenas contain errors in their date of interest; that only underscores the need to enjoin this bad-faith investigation as a whole.

This Court has quashed grand jury subpoenas whose dominant purpose was to harass Federal Reserve Chairman Jerome Powell to pressure him to lower interest rates. *In re Grand Jury Subpoenas Nos. [Redacted] & [Redacted]*, 823 F. Supp. at 11. That finding was based on a "mountain of evidence," including many public Truth Social posts by President Trump criticizing

Powell for refusing to lower rates. *Id.* The Court quashed the subpoenas because the publicly available "evidence of improper motive" was "so strong," and the purported justifications for the subpoenas were "so tenuous" that it was hard to see the investigation "as anything other than a convenient pretext for launching a criminal investigation that the Government launched for another, unstated purpose: pressuring Powell to knuckle under." *Id.* at 14.

Judge Patrick Schiltz also recently quashed grand jury subpoenas seeking information related to immigration enforcement in the face of "overwhelming evidence" that they "were not issued to investigate, but to harass, coerce, and retaliate." *In re Grand Jury Subpoenas*, 835 F. Supp. 3d 947, 960 (D. Minn. 2026). The court cited President Trump's directions to withhold federal funding from sanctuary jurisdictions and his social media posts criticizing Minnesota's failure to cooperate with ICE and threatening Minnesota's political leaders with "RETRIBUTION," and a letter from then-Attorney General Pam Bondi to Governor Walz demanding that Minnesota repeal its sanctuary policies. *Id.* at 956–57. On the other side of the balance, the government's examples of incidents purportedly justifying its investigation had only "spurious" connections to "any possible criminal conduct." *Id.* at 959. The fact that "connections between the information sought in the subpoenas and any possible criminal violation range from extremely weak to nonexistent" supported the conclusion that the subpoenas issued for an improper retaliatory, coercive purpose. *Id.* at 960.

Here, too, public statements by the Administration make clear that Investigation 18's purpose is not to investigate potential criminal activity, but to carry out the Administration's politically driven agenda of intimidating and surveilling dissenters. S*ee supra* pp. 5–13 (Statement of Facts). In fact, some of the evidence that the District of Minnesota considered is equally relevant here. For instance, the court cited "the Trump Administration's well-established history of using

criminal investigations to retaliate against and pressure the President's political and personal adversaries." *In re Grand Jury Subpoenas*, 835 F. Supp. 3d at 957 (citing *In re Grand Jury Subpoenas Nos. [Redacted] & [Redacted]*, 823 F. Supp. 3d at 5). Indeed, the Administration has repeatedly attempted to prosecute President Trump's political foes, including former FBI director James Comey,[17] New York Attorney General [redacted],[18] and former FBI officials whom DOJ accused of lying to Congress about the FBI's probe into Hunter Biden.[19] The Administration has initiated investigations into Democratic lawmakers who urged U.S. service members to "refuse illegal orders"[20] and former White House aide Cassidy Hutchinson, who testified against President Trump to the January 6 committee.[21]

The Administration's retaliatory investigations have sometimes led to criminal charges, as in the case of former Olympian David Hearn, who was prosecuted for damaging the Reflecting Pool despite the government's knowledge that Mr. Hearn's conduct had caused no damage to the Reflecting Pool.[22] The Superior Court of the District of Columbia dismissed the case with prejudice, finding that Mr. Hearn faced "the unique possibility that the government will revive this case—one that it has already announced to be meritless—based on political pressure brought by the President of the United States upon his subordinate officers." Order, *United States v. Hearn*,

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[17] Eric Tucker, Alanna Durkin & Michael Kunzelman, *Trump Administration Attempting to Prosecute Former FBI Director James Comey Again*, AP (Oct. 26, 2026), https://perma.cc/X9Z4-55T7.

[18] Kaanita Iyer, Katelyn & Devan Cole, *Justice Department Tried to Bring a Third Felony Charge Against* [redacted], CNN (Dec. 18, 2025), https://perma.cc/48A5-4LLM.

[19] Casey He, *Judge Tosses Charges Against Former FBI Officials Accused of Lying to Congress Over Hunter Biden Probe*, Politico (Nov. 2, 2026), https://perma.cc/8SJB-9Q4B.

[20] Joey Garrison, *FBI Probes 6 Democrats Who Urged Military to Refuse 'Illegal Orders,'* USA Today (Nov. 25, 2025), https://perma.cc/3HL2-P5A5.

[21] Hugo Lowell, *The DOJ Is Weighing Perjury Charges Against Cassidy Hutchinson*, Wired (Oct. 9, 2026), https://perma.cc/G5Q6-ZXGJ.

[22] Ashley Ahn, *Judge Permanently Tosses Trump Administration's Reflecting Pool Vandalism Prosecution*, Politico (Oct. 1, 2026), https://perma.cc/2PRJ-KMTT.

No. 2026 CF2 010237 at 3 (Sup. Ct. D.C. Sept. 28, 2026). This finding was, in part, based on President Trump's public statements regarding the case, which demonstrated a risk that Mr. Hearn would be prosecuted "either because the current United States Attorney and her assistants will eventually yield to his public pressure campaign or because the President will replace them with prosecutors more likely to carry out his wishes." *Id.* at 20. Moreover, the court found that "[g]iven the process that led to the Indictment in this case, Mr. Hearn and the public cannot view the promise that a future grand jury would protect him against a meritless, politically driven prosecution at some point in the future as anything short of facetious." *Id.* at 21. Cases like Mr. Hearn's make Investigation 18 subpoenas all the more frightening to those whose information is targeted. *See, e.g.*, Bluesky Poster 2 Decl. ¶ 32 ("Knowing that the federal government has sought indictments against others with no evidence of criminal wrongdoing, like David 'Davey' Hearn, adds to my fear about what will happen to me.").

In *Council for Periodical Distributors Ass'n v. Evans*, the Middle District of Alabama expressly recognized that retaliating against the exercise of First Amendment rights is an "impermissible purpose" for instituting grand jury proceedings. 642 F. Supp. 552, 561 (M.D. Ala. 1986), *aff'd in part, vacated in part*, 827 F.2d 1483 (11th Cir. 1987). There, national publishers and trade associations claimed that a county district attorney had instituted criminal proceedings against them and issued grand jury subpoenas in retaliation for their having sued him. *Id.* at 557. The district attorney had previously established a task force to study distributors' sale of sexually explicit magazines to convenience stores in Montgomery, and decided to pursue a consent decree rather than criminal obscenity-related charges. *Id.* at 554. But after a retailer sued the district attorney for instituting a prior restraint, the district attorney proceeded to initiate grand jury

proceedings, with the local merchants, a local distributor, and Penthouse, Newslook, and Playboy as targets. *Id.* at 556.

In finding that "retaliatory purpose was a major motivating factor in [the district attorney's] decision to institute grand jury proceedings," the court considered the district attorney's change in strategy from "resolv[ing] the pornography problem strictly on a local level" to instituting grand jury proceedings against national publishers, the district attorney's acknowledgment that initiating criminal proceedings would be "a highly effective method for deterring local merchants from selling the plaintiffs' publications," the district attorney's "eager endorsement of retaliatory actions by others" against a plaintiff, which "suggest[ed] a readiness to engage in such activities himself," and "the strength of the evidence and seriousness of the charges should also be considered in determining if retaliation . . . exists." *Id.* at 566–67 (quoting *Smith v. Hightower*, 693 F.2d 359, 369 (5th Cir. 1982).

Here, too, similar evidence indicates that Investigation 18 is motivated by an improper, retaliatory purpose. First, Defendants are using grand jury subpoenas to seek the same types of information that DHS previously unsuccessfully (and unlawfully) attempted to obtain through administrative subpoenas—which it withdrew when challenged in court. The only apparent explanation for this shift is to move their baseless investigations further out of public view, using a tool that typically receives a strong presumption of regularity. Second, using grand jury subpoenas to unmask anonymous users is a highly effective means of chilling speech, thereby furthering Investigation 18's purpose of retaliating against dissenters.[23] Third, as the examples

[23] *See, e.g.*, Matthew Purdy & Alan Feuer, *How Trump Has Cracked Down on Dissent Since the Killing of Charlie Kirk*, N.Y. Times (Sept. 22, 2026), https://perma.cc/5XES-FPAR; Edith Olmsted, *Trump Wants to Permanently Shut Historic Site for Protests*, The New Republic (Sept. 3, 2026), https://perma.cc/PY7L-TGQ9.

above demonstrate, Defendants have repeatedly engaged in retaliatory efforts against their critics. Finally, the strength of evidence that the anonymous speakers targeted in Investigation 18 committed any crime is nonexistent. After carefully reviewing the magazines at issue in *Evans*, the court found that "none . . . can be fairly categorized as obscene." *Evans*, 642 F. Supp at 567. Here, too, the speech that prompts issuance of subpoenas as part of Investigation 18 cannot fairly form the basis of any good-faith criminal investigation.

While the government does not need to establish probable cause to obtain a grand jury subpoena, "when the evidence of improper purpose is overwhelming, that might require the Government to show something akin to probable cause." *In re Grand Jury Subpoenas Nos. [Redacted] & [Redacted]*, 823 F. Supp. 3d. at 11. The grand jury's wide latitude to investigate is derived from its status as "a constitutional fixture in its own right, legally independent of the Executive," *Nixon v. Sirica*, 487 F.2d 700, 713 n.54 (D.C. Cir. 1973) (citation omitted), and its "dual function of determining if there is probable cause to believe that a crime has been committed and of protecting citizens against unfounded criminal prosecutions," *Branzburg*, 408 U.S. at 686–87. But where substantial evidence indicates that the executive branch is exploiting the grand jury's authority to unmask anonymous critics in retaliation for their speech rather than to investigate criminal activity in good faith, the traditional reluctance to interfere with grand jury subpoenas is unwarranted. This is especially so considering that, in recent years, the grand jury's ancient investigative power has been usurped by professional prosecutors. "[I]n modern federal practice, prosecutors often issue grand jury subpoenas with little or no involvement of the grand jurors themselves." *In re Grand Jury Subpoenas to Off. of N.Y. State Att'y Gen.*, 814 F. Supp. 3d 284, 298–99 (N.D.N.Y. 2026) (footnote omitted); *see also Doe v. DiGenova*, 779 F.2d 74, 80, 84 (D.C. Cir. 1985) ("[G]rand jury subpoenas are issued at the request, and in the discretion of the

prosecuting attorney involved in the case . . . without prior approval by the head of the agency, the grand jury, or any judge."). Indeed, "the term 'grand jury subpoena' is in some respects a misnomer, because the grand jury itself does not decide whether to issue the subpoena; the prosecuting attorney does." *Lopez v. Dep't of Just.*, 393 F.3d 1345, 1349 (D.C. Cir. 2005) (quotation omitted).

These modern realities create the risk that the Department of Justice will "use the Grand Jury to do whatever the DOJ wants," *Fulton Cnty. Bd. of Registration & Elections v. United States*, 836 F. Supp. 3d 1305, 1309 (N.D. Ga. 2026). And indeed, that is what has happened with Investigation 18. The Administration wanted to gather intelligence on individuals perceived to be critical of its immigration enforcement efforts, so it opened Investigation 18 as a means of quickly and easily unmasking such individuals—regardless of whether there was a good-faith basis to investigate each individual. Investigation 18 has turned the grand jury—which is supposed to be "a protective bulwark standing solidly between the ordinary citizen and an overzealous prosecutor," *United States v. Dionisio*, 410 U.S. 1, 17–18 (1973), into a tool to accomplish what administrative subpoenas could not: baseless unmasking of perceived government critics, including so that they can be placed on a domestic terrorist list or entered into a database of dissenters, with no legislative requirements or judicial oversight.

2. <u>There is no good-faith basis for Investigation 18.</u>

Investigation 18 subjects people to intimidation and retaliation based on constitutionally protected criticism of the federal government that could not form the basis of a good-faith criminal investigation.

The subpoena that issued to Bluesky seeking Bluesky Poster 1's information listed October 8, 2026, as the date of interest. Follansbee Decl., Ex. B. On that date, Bluesky Poster 1 posted, in response to an article by The Intercept about an ICE agent posing as a construction worker on the

scene of a shooting, "Burn ICE to the ground. Burn DHS to the ground. Salt the earth." Bluesky Poster 1 Decl. ¶ 13. This post could not plausibly be the basis of a good-faith investigation. It communicates no colorable threat or incitement. It speaks metaphorically about disabling or dismantling a diffuse, nationwide agency, which can neither be burned to the ground, nor has earth to be salted. The post communicates similar sentiment as the common slogan "abolish ICE," albeit using more colorful language. *See, e.g.*, *Abolish ICE*, Amnesty International USA, https://www.amnestyusa.org/campaigns/abolish-ice/.

None of Bluesky Poster 1's other posts from October 8, 2026, come close to providing the basis for a good faith investigation, either. In one, Bluesky Poster 1 commented on another user's post of an article from The Guardian about charging an ex-Trump aide for giving key testimony regarding the January 6th attack on the Capitol, saying "These guys love strapping dynamite to their feet and shooting at it." Bluesky Poster 1 Decl. ¶ 13. In response to another user's post saying "Markwayne Mullin on the Twin Cities: 'They're gonna have to ask President Trump for help, and if they do, we can come up and we can clean that city up in no time, but they're gonna have to admit they were wrong first,'" Bluesky Poster 1 commented "Fuck you, McMuffin." *Id.* Bluesky Poster 1 also referred to Vice President Vance as a "fuckstick" and posted "Marco don't have the juice," in response to a post about Marco Rubio running for president. *Id.* Bluesky Poster 1's posts on the date of interest in the subpoena to Bluesky are reproduced as Exhibit A of the Wessler Declaration. These statements, expressing Bluesky Poster 1's political views in colorful ways, are far from anything that could plausibly be considered a true threat or incitement.

The subpoena that issued to Bluesky for Bluesky Poster 2's information listed October 6, 2026, as the date of interest. Follansbee Decl., Ex. D. On that date, Bluesky Poster 2 had posted a

reply to a 92-second video of law enforcement violently dragging a grandmother across rough ground by a handcuff, as shown in the screenshots below:



Bluesky Poster 2 Decl. ¶¶ 13, 16.

The woman's arm is visibly bleeding, and a bystander informs the officers "she's sick, leave her alone." *Id.* ¶ 14. The video then shows the woman lying on the ground, still, at the officer's feet. *Id.* The video pans to a man being handcuffed by officers as he grunts in pain, and then shows two officers pinning the man to the ground. *Id.*

The user who posted the video captioned it: "Police violently drag Hispanic grandmother across rough ground- injuring both arms. Witnesses yell she has a serious heart condition & was just released from hospital. Cops kneel on her chest anyway. 'They dragged her like a doll,' brother said. Incident occurred in Batesville, Texas." *Id.* ¶ 15.

The post was deeply upsetting to many viewers, as demonstrated by the many replies it garnered, including: "Another family destroyed. Another American dream turned into a nightmare. Fk this shithole country. People should not be treated this way," "This is sick behavior," "Is this how we want humans to be treated in our country?!!," "This is barbaric! We're being attacked by deranged animals!," "I am so sick to my stomach I can't even imagine what they are going through," "Humans do not do this to each other," "This is the most disgusting thing I've seen since the Nazis took the Jews to the concentration camps! ICE/DHS is the Gestapo," "Have seen many ICE abuses also, but not old folks like this," "SHAME on these pendejos. Pinche abusadores. I hope that abuela heals completely and sues them for everything they own," "How fucking dead inside do you have to be to do these things," "What I see here is men brutalizing, an old woman. We've got to make this stop," "Wtf is wrong with this men?? Society has broken down when you see an old lady being drugged across ground, fighting for HER LIFE!! #NOKINGS," "These so called 'humans' are just evil ghouls," and "They're treating people as if they were a clumsy package or something. Not like they're human beings. So disgraceful. It's torture." *Id.* ¶ 18.

Bluesky Poster 2's reply to the video stated, "Fact: more than once in my childhood I wanted to 'kill' my brother and sister for annoying me (Mom, he's touching me). Now, as a senior citizen who pays attention, I want to kill ICE, the whole damn lot of them because of how they 'touch' humans, as seen in this video." *Id.* ¶ 16.

This post could not plausibly be the basis of a good-faith investigation, as it does not, on its face, express a potential threat, harassment, or incitement. The first sentence of the post makes clear that Bluesky Poster 2 is using the term "kill" metaphorically. In the same way a child wants to figuratively "kill" their siblings, a senior citizen wants to figuratively "kill" ICE for how they treat people. The statement itself indicates that these "wants" will not come to fruition; a child

does not literally kill their siblings for annoying them—they report to their mother that "he's touching me." Similarly, a senior citizen does not want to—and could not possibly—literally kill "the whole damn lot" of ICE—they report their dismay and frustration on social media. This District over a decade ago recognized that permitting the government to "require Twitter to divulge the identity of a teenager who tweets, 'My parents are so mean! I want to toss them in a ditch," would significantly compromise anonymity on the Internet. *In re Grand Jury Subpoena No. 11116275*, 846 F. Supp. 2d at 8. To guard against that result, this Court must recognize that a statement like Bluesky Poster 2's cannot form the basis of a good-faith investigation absent other evidence sufficient to make a prima facie showing that the speaker committed a crime.

On October 6, 2026, Bluesky Poster 2 also made several other posts, equally incapable of forming the basis of a good-faith investigation. *See* Bluesky Poster 2 Decl. ¶ 19. Those posts include a picture of a shirt that said "I'M SICK OF TRUMP PASSING EVERYTHING EXCEPT AWAY!!!" with the caption "Best shirt ever [laughing emoji] [clapping emoji]," a comment on another user's post of a picture showing President Trump dressed in a pink dress aboard a boat labeled "S.S. Titanic 14," that says, "Now I question whether the Titanic hit an iceberg or if it sunk under the fat orange blimp," and, "He's resting his eyes. Not quite the deep sleep I hoped for," as a comment on another user's post of a picture of President Trump standing up with his eyes closed. *Id.*

Bluesky Poster 2 also posted twelve other posts on that same day, none of which could plausibly form the basis of a good-faith investigation. All of Bluesky Poster 2's posts on the date of interest are reproduced as Exhibit B to the Wessler Declaration.

Instagram Poster also engages in political speech on social media. Instagram Poster Decl. ¶ 5. While Instagram Poster often uses her account to discuss beauty products, cats, and bodily

changes post-menopause, she also occasionally comments on political news stories. *Id.* On the date of interest listed in the subpoena, Instagram Poster had watched a video of an ICE officer that another user had posted to Instagram. *Id.* ¶ 16. In the video, an ICE agent violently and without provocation attacks protestors with a baton. *Id.* ¶ 17.

Instagram Poster commented on the video, "Looks like a rabid dog foaming at the mouth. Should be put down [water gun emoji]." *Id.* ¶ 18. Instagram Poster's Instagram posts from the date of interest in the subpoena are reproduced as Exhibit C to the Wessler Declaration. As with Bluesky Poster 2's posts, Instagram Poster's posts on the date of interest are protected under the First Amendment and could not form the basis of a good-faith investigation. Instagram Poster's hyperbolic and metaphorical comment that the ICE agent looks like a rabid dog and "[s]hould be put down" does not communicate that she intends to do violence to the agent. Such figurative language is commonly used on social media to express vehement disagreement and disdain. And, in fact, Instagram Poster's account indicates that she lives abroad, Instagram Poster Decl. ¶ 20, and the ICE agent was in the United States—making clear she posed no threat to the agent.

Like the other Plaintiffs, X Poster contributes to public discourse by posting anonymously on social media. X Poster Decl. ¶ 8. X Poster primarily uses their X account to post about soccer. *Id.* ¶ 6. X received a grand jury subpoena demanding information about X Poster's account as of September 11, 2026. Follansbee Decl., Ex. H. No posts on that date appear on X Poster's profile. And X Poster does not recall deleting or un-reposting any posts on or around September 11, 2026. X Poster Decl. ¶ 24. Posts that X Poster made between July 6, 2026 and October 9, 2026 are reproduced in Exhibit D to the Wessler Declaration. Most of the posts relate to soccer, but X Poster also posted content that was critical of the Administration, including tagging DHS, ICE, and President Trump on a post that read "fuck you," and referring to the President as "a rapist sex

offender." X Poster Decl. ¶ 7. Neither of these statements contained a threat—much less a true threat—or incitement; they merely expressed X Poster's views. Despite the clearly protected nature of all of X Poster's posts, and their inability to form the basis of a good-faith investigation, a grand jury subpoena issued to unmask their identity.

To be sure, some of Plaintiffs' posts are heated, emotional, and even vitriolic. But they are also characteristic of political discourse online. Indeed, even prominent politicians make emotional, provocative posts.[24] And "[u]ntil the United States proves otherwise, the expressive materials being investigated are presumptively protected by the First Amendment." *In re Grand Jury Investigation of Possible Violation of 18 U.S.C. s 1461 et seq.*, 706 F. Supp. 2d 11, 17 (D.D.C. 2009). Even "highly charged" political rhetoric lies "at the core of the First Amendment." *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 926–27 (1982).

[24] For example, Robert Foster, a former Mississippi House lawmaker who lost the 2019 bid for governor, tweeted "Some of y'all still want to try and find political compromise with those that want to groom our school aged children and pretend men are women, etc. I think they need to be lined up against wall before a firing squad to be sent to an early judgment." Ashton Pittman, *Ex-GOP Goc Candidate Calls for 'Firing Squad' for Trans Rights Supporters, Political Foes,* Mississippi Free Press (Mar. 25, 2022), https://perma.cc/74DX-MVP5. The day after President Trump won the 2024 election, Mike Davis, a former Supreme Court law clerk and Senate aide who was thought to be in the running for President Trump's Attorney General, posted on X: "Here's my current mood: I want to drag their dead political bodies through the streets, burn them, and throw them off the wall. (Legally, politically, and financially, of course.)" Mike Davis (@mrddmia), X (Nov. 7, 2024), https://perma.cc/E7PR-QPR4. Spencer Cox, Utah's Lieutenant Governor, posted "I want to punch someone" amidst a late-night rant about political tribalism. Joe DePaolo, *Republican Lt. Gov of Utah Blows Up on 'Political Tribalism' In Viral Tweetstorm: 'I Want to Punch Someone'*, Mediaite (June 20, 2018), https://perma.cc/L86S-5XPT. Bo French, candidate for Texas Railroad Commissioner, in response to a post saying "Good night to everyone who wants to see Adam Schiff in prison," posted, "No. I want to see public executions for traitors." Bo French (@Bo_French_TX), X (Feb. 22, 2025), https://perma.cc/FN5Q-3CPB.

3. For largely the same reasons demonstrating bad faith and improper purpose, Investigation 18 is also retaliatory in violation of the First Amendment.

Where a "government investigation . . . inflicts a standalone injury by chilling protected speech, it falls under the prohibited umbrella and is actionable." *Endocrine Soc'y v. Fed. Trade Comm'n*, 832 F. Supp. 3d 1, 14 (D.D.C. 2026).

Plaintiffs meet the three elements for a retaliation claim. As demonstrated above, Plaintiffs engaged in protected speech, *supra* A.2., and such speech caused Investigation 18 subpoenas to issue, *supra* A.1. And because Defendants' practice of issuing grand jury subpoenas as part of Investigation 18 to unmask anonymous government critics would also chill a person of ordinary firmness from continuing to speak out, Investigation 18 and the subpoenas that issue as part of it are retaliatory in violation of the First Amendment. *See, e.g.*, *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 917 (9th Cir. 2012) (en banc) (holding that broad, invalid grand jury subpoenas demanding a newspaper reveal its sources and disclose reporters' notes were sufficient to chill speech); *Evans*, 642 F. Supp. at 557, 568 (construing the institution of criminal proceedings—including issuing grand jury subpoenas—as an adverse action for retaliation purposes)*, aff'd in part, on attorneys' fees*, 827 F.2d 1483; *Lattarulo v. Mullin*, No. 25-cv-12861-ADB, 2026 WL 3459212, at *3 (D. Mass. Nov. 13, 2026) ("[S]earches and seizures are actionable adverse actions under the First Amendment.").

In *Evans*, the court found that the institution of criminal proceedings—including issuing grand jury subpoenas—was retaliatory in violation of the First Amendment, and proceeded to enjoin the defendants from "further pursuit of criminal proceedings against the national publishers and trade associations and the local merchants for actions occurring prior to the filing of this lawsuit and based on the magazines that are the subject of this lawsuit." *Evans*, 642 F. Supp at 568.

Given the substantial evidence of the improper, retaliatory purposes of Investigation 18 and the subpoenas that issue as part of it, Plaintiffs are likely to succeed on their First Amendment claims. The Court should therefore enjoin further pursuit of Investigation 18.

B. The government lacks a compelling interest in unmasking Plaintiffs because it cannot make a prima facie showing that they committed a crime.

Independent of Investigation 18's bad faith and retaliatory nature, the subpoenas issued as part of Investigation 18 violate the First Amendment because the government lacks the ability to make a prima facie showing that each speaker committed a crime. Because the First Amendment affords robust protection to anonymous speech, grand jury subpoenas that issue to pierce an anonymous speaker's anonymity deserve careful scrutiny to ensure that the government has a compelling interest in unmasking the speaker. The government's interest will not be sufficiently compelling unless it can make a prima facie showing to the judge overseeing the grand jury that the speaker committed a crime.

1. Anonymous speech receives robust protection under the First Amendment.

Just as in the physical world, "the ability to speak anonymously on the Internet promotes the robust exchange of ideas and allows individuals to express themselves freely without 'fear of economic or official retaliation" or "'concern about social ostracism.'" *In re Anonymous Online Speakers*, 661 F.3d 1168, 1173 (9th Cir. 2011) (quoting *McIntyre*, 514 U.S. at 341–42).

Plaintiffs each use a pseudonym on social media rather than disclosing their true identity, in order to protect their privacy, guard against retaliation, and separate their social media commentary from other aspects of their lives. Bluesky Poster 1 Decl. ¶ 4–5; Bluesky Poster 2 Decl. ¶¶ 20–22; Instagram Poster Decl. ¶ 8; X Poster Decl. ¶ 8. Anonymity has long been used for these purposes; indeed, protection from retaliation is among "the most constructive purposes" of anonymity. *Talley*, 362 U.S. at 65. James Madison, Alexander Hamilton, and John Jay wrote the

Federalist Papers under a pseudonym, because "[f]or the Framers and their contemporaries, anonymity was the deciding factor between whether their writings would produce a social exchange or a personal beating." Jonathan Turley, *Registering Publius: The Supreme Court and the Right to Anonymity*, 2001 Cato Sup. Ct. Rev. 57, 58. Anonymity serves as a "shield from the tyranny of the majority," and "exemplifies the purpose behind the Bill of Rights, and of the First Amendment in particular: to protect unpopular individuals from retaliation—and their ideas from suppression—at the hand of an intolerant society." *McIntyre*, 514 U.S. at 357.

Of course, the "threat of persecution" is not the only reason an individual might speak or write anonymously. A speaker might assume anonymity "to preserve as much of one's privacy as possible." *Id.* at 342. A speaker may wish to "separate his private life from his very public statements and the surrounding controversy." Jeff Kosseff, *The United States of Anonymous: How the First Amendment Shaped Online Speech* 14–15 (2022). Or "an advocate may believe her ideas will be more persuasive if her readers are unaware of her identity." *McIntyre*, 514 U.S. at 342. Writing anonymously "provides a way for a writer who may be personally unpopular to ensure that readers will not prejudge her message simply because they do not like its proponent." *Id.* To be sure, a person might speak anonymously to prevent their apprehension for making a threat. But there is no question that "an author's decision to remain anonymous . . . is an aspect of the freedom of speech protected by the First Amendment." *Id.* And in keeping with this Nation's "honorable tradition of advocacy and dissent," the right to anonymity must not be sacrificed without sufficient justification. Id. at 357.

2. <u>To unmask an anonymous speaker, the government must make a prima facie showing that the speaker committed a crime.</u>

The government's interest in investigating potential violations of law "does not automatically override First Amendment rights." *Bursey v. United States*, 466 F.2d 1059, 1086

(9th Cir. 1972). The Supreme Court has recognized that "it is an essential prerequisite to the validity of an investigation which intrudes into the area of constitutionally protected rights of speech, press, association and petition that the State convincingly show a substantial relation between the information sought and a subject of overriding and compelling state interest." *Gibson v. Fla. Legis. Investigation Comm.*, 372 U.S. 539, 546 (1963). Accordingly, where grand jury subpoenas directly implicate First Amendment concerns, "the government must demonstrate a compelling interest in the information sought" as well as "a sufficient connection between the information sought and the grand jury investigation." *In re Grand Jury Subpoena to Kramerbooks & Afterwords, Inc.,* Nos. 98-MC-135-NHJ, 98-MC-138-NHJ, 26 Med. L. Rptr. 1599, 1601 (D.D.C. Apr. 6, 1998) (collecting cases); *accord In re Grand Jury Investigation of Possible Violation of 18 U.S.C. s 1461 et seq.*, 706 F. Supp. at 18; *In re Grand Jury Subpoena No. 11116275*, 846 F. Supp. 2d at 4.

Considering a grand jury subpoena served on Company X for records of customer purchases of movies during a 15-day period, this District explained that "[u]ntil the United States proves otherwise, the expressive materials being investigated are presumptively protected by the First Amendment and Company X's customers have a correlative right to receive that information anonymously." *In re Grand Jury Investigation of Possible Violation of 18 U.S.C. s 1461 et seq.*, 706 F. Supp. 2d at 17. The Court was rightly concerned that "if the subpoenaed customer records are given to the Government, it could have a chilling effect on the exercise of Company X's customers' First Amendment rights." *Id.* at 17–18. The Court denied the government's motion to compel compliance with the subpoena by un-redacting customer names, "[b]ecause none of the government's proffered reasons for ordering Company X to comply with the subpoena are compelling." *Id.* at 21.

The government has a compelling interest in unmasking an anonymous social media user via grand jury subpoena only if it can make a prima facie showing that the speaker committed a crime. *See In re Grand Jury Subpoena No. 11116275*, 846 F. Supp. 2d at 8. Considering a grand jury subpoena served on Twitter to unmask the identity of a user who posted "I want to [f***] Michelle Bachman in the ass with a Vietnam era machete," this District recognized that "[t]he First Amendment limits the authority of the federal government to criminalize speech, and in this context would only allow prosecution of Mr. X if his tweet constituted a 'true threat.'" *Id.* at 5, 7. But because the user had "tweeted a *prima facie* threat," which "[o]n its face . . . expresses a threat of violence" in that it describes "the forcible insertion of an extremely sharp, real-world weapon into Ms. Bachmann's rectum, which, if performed, would undoubtedly cause serious bodily injury—and likely death," *id.* at 7, there was a compelling need to unmask Mr. X's identity so that the grand jury could investigate Mr. X's subjective intent, *id.* at 6, 8 ("The grand jury ought to know if Mr. X has a history of making threats to political candidates in other forums, or has stalked or engaged in other sinister behavior toward Ms. Bachmann, or happens to actually own a Vietnam-era machete."). Inversely, a statement that, on its face, does not express a threat of that person committing violence against another person would not furnish the government with a compelling need to unmask the speaker who said it.

Courts around the country apply a similar safeguard in cases evaluating civil discovery subpoenas seeking to compel internet service providers to disclose their users' identities: A party must make a prima facie showing that an anonymous speaker violated the law before compelling disclosure of their identity. *See Dendrite Int'l, Inc. v. Doe No. 3*, 775 A.2d 756, 760 (N.J. Super. Ct. App. Div. 2001) (originating widely-followed standard under which plaintiff requesting disclosure "must produce sufficient evidence supporting each element of its cause of action, on a

prima facie basis, prior to a court ordering the disclosure of the identity of the unnamed defendant"); *see, e.g.*, *Sinclair v. TubeSockTedD*, 596 F. Supp. 2d 128, 132 (D.D.C. 2009) (citing authorities requiring "prima facie" showing and quashing unmasking subpoenas served by plaintiff whose defamation action was "fundamentally flawed" including because it failed to allege special damages or actual malice); *Highfields Cap. Mgmt., L.P. v. Doe*, 385 F. Supp. 2d 969, 977–78 (N.D. Cal. 2005) (granting anonymous defendant's motion to quash unmasking subpoena in trademark action because plaintiff failed to make prima facie showing of speech's commercial character and likelihood to cause confusion); *see generally* Matthew Mazzotta, *Balancing Act: Finding Consensus on Standards for Unmasking Anonymous Internet Speakers*, 51 B.C. L. Rev. 833, 849 (2010) (collecting cases).

Of course, plaintiffs may be able to make the requisite prima facie showing to justify unmasking defendants. *See, e.g.*, *Sony Music Ent. Inc. v. Does 1-40*, 326 F. Supp. 2d 556, 565 (S.D.N.Y. 2004) (permitting unmasking where plaintiffs demonstrated prima facie case of copyright infringement); *Doe I v. Individuals*, 561 F. Supp. 2d 249, 256 (D. Conn. 2008) (permitting unmasking where plaintiff demonstrated prima facie case of libel). But in requiring a prima facie showing that the anonymous speaker violated the law as a prerequisite to unmasking, these courts have recognized "the Constitutional protection afforded pseudonymous speech over the internet, and the chilling effect that subpoenas would have on lawful commentary and protest." *USA Techs., Inc. v. Doe*, 713 F. Supp. 2d 901, 906 (N.D. Cal. 2010). Courts' continued reliance on this standard across decades reflects that it does not unduly impede investigations. Indeed, applying this requirement in the grand jury context helps ensure that grand jury investigations serve the grand jury's "ultimate purpose: to help the prosecutor indict *valid* criminal charges." *Fulton Cnty. Bd. of Registration & Elections*, 836 F. Supp. 3d at 1315 (emphasis added).

3. The government lacks a compelling interest in unmasking Plaintiffs because it cannot make a prima facie showing that Plaintiffs committed a crime.

As explained above, Defendants do not have a good-faith basis to investigate Plaintiffs—let alone a prima facie showing that Plaintiffs committed a crime. Plaintiffs are therefore likely to succeed on their First Amendment claims against Defendants. "It would be a cruel twist of history to allow the institution of the grand jury that was designed at least partially to protect political dissent to become an instrument of political suppression." *Bursey*, 466 F.2d at 1089. If that fate is to be avoided, Investigation 18 must be enjoined.

II. Absent preliminary injunctive relief, Plaintiffs' and putative class members' anonymity will be irreversibly lost.

"Even if a criminal subpoena does not ultimately lead to prosecution, being subject to one can still impose costs." *In re Grand Jury Subpoenas Nos. [Redacted] & [Redacted]*, 823 F. Supp. 3d at 7. Absent relief from this Court, Defendants will unmask Plaintiffs and class members, irreparably piercing their anonymity. Once their identifying information has been disclosed, the "First Amendment injury could not be undone." *See X Corp. v. Media Matters for Am.*, 120 F.4th 190, 196 (5th Cir. 2024). Defendants will forever know Plaintiffs' and class members' identifying information and all of the views that they have communicated anonymously. And "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976); *see also Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 19 (2020); *Paxton*, 138 F.4th at 585.

Defendants' issuance of Investigation 18 subpoenas has already had a chilling effect on Plaintiffs and class members. When Bluesky Poster 2 learned of the grand jury subpoena targeting their information, they were afraid. Bluesky Poster 2 Decl. ¶ 23. In the days after learning about the subpoena, Bluesky Poster 2 was scared to post political content, and refrained from commenting on political posts that they otherwise would have. *Id.* Now, while Bluesky Poster 2

has made a concerted effort not to let Defendants silence them completely, they still second-guess their posts and self-censor to make sure there is no possibility that their political posts could be seen as threatening or dangerous, and they still refrain from commenting on many posts that they would have commented on before learning about the grand jury subpoena. *Id.* ¶ 26. Bluesky Poster 2 also fears that, if their information is turned over to Defendants, they will be added to a database of dissenters and suffer consequences for the rest of their life. Bluesky Poster 2 Decl. ¶¶ 27–28.

X Poster has similarly been chilled by Investigation 18. Since receiving notice of the subpoena, X Poster has been hesitant to post on X. X Poster Decl. ¶ 21. While X Poster used to enjoy sharing their commentary on soccer and their opinions about news, now, they do not want to post about anything, because they know the government has their handle and is trying to unmask them. *Id.* And when X Poster sees posts that are critical of ICE, they think twice before liking or reposting them—even if X Poster agrees with the content. *Id*. X Poster feels like the government is watching them, and they worry about what the government will do next. *Id.*

Bluesky Poster 1 has likewise been self-censoring since learning about the subpoena, to make sure they are not saying anything that could be perceived as inflammatory. Bluesky Poster 1 Decl. ¶ 14. Bluesky Poster 1 does not want to be silenced but is afraid to post—especially about politics. *Id.* There are many posts that Bluesky Poster 1 would have commented on, but did not, because they were scared at the prospect of further investigation. *Id.* ¶ 17.

Instagram Poster, too, has been hesitant to express their strong disagreement with ICE's actions since learning about the subpoena for their information. Instagram Poster Decl. ¶ 22. In fact, Instagram Poster no longer posts comments criticizing ICE because they fear that those comments will lead to further retaliation. *Id.*

In addition to the chilling effects of Investigation 18 subpoenas—which are, alone, sufficient to establish irreparable injury—being the subject of these subpoenas requires Plaintiffs and class members to "live with the anxiety and fear of knowing that [they are] under criminal investigation." *In re Grand Jury Subpoenas Nos. [Redacted] & [Redacted]*, 823 F. Supp. 3d at 7; *see also United States v. Hearn*, No. 2026 CF2 010237 at 20 (Sup. Ct. D.C. Sept. 28, 2026) (dismissing criminal charges with prejudice in part to protect defendant from having "to await the decision as to whether the government revives a criminal case against him knowing that should he engage in political activity, his conduct could be viewed by the President as a reason to reinstate the prosecution"). Ever since learning about the subpoena for their information, the sight of law enforcement makes Bluesky Poster 2 nervous, because knowing that grand jury subpoenas are being used to investigate anonymous critics of the government has undermined this former prosecutor's trust in the criminal justice system. Bluesky Poster 2 Decl. ¶ 31. Bluesky Poster 1 and X Poster live in fear that ICE officers will show up at their houses or those of their family members. X Poster Decl. ¶ 15; Bluesky Poster 1 Decl. ¶ 15. Plaintiffs and class members will continue to endure these harms until Investigation 18 is enjoined.

III. The equities and the public interest favor Plaintiffs.

The balance of equities and public interest "merge if," as here, "the Government is the opposing party." *Paxton*, 138 F.4th at 585. And "'there is always a strong public interest in the exercise of free speech rights'" that, without a preliminary injunction, would be "'abridged by an unconstitutional' government action." *Id.* (quoting *Pursuing Am.'s Greatness v. Federal Election Commission*, 831 F.3d 500, 511 (D.C. Cir. 2016) (citation omitted)). It is unquestionably in the public interest to enjoin Defendants from violating Plaintiffs' and class members' First Amendment right to criticize the government anonymously in a manner that, as shown above, plainly does not constitute a crime or evidence of a crime. And, while the government certainly

has an interest in investigating prima facie threats, it has no legitimate interest in retaliating against its critics or conducting a bad-faith investigation to gather intrusive intelligence on those who merely express dissenting views.

In quashing a grand jury subpoena commanding Fulton County to disclose the "personal identifying information of thousands of employees and volunteers who participated in activities related to the 2020 Election," the Northern District of Georgia recognized that such disclosure could "chill participation in future elections." *Fulton Cnty. Bd. of Registration & Elections*, 836 F. Supp. 3d at 1319. Here, the Investigation 18 subpoenas, by commanding disclosure of the personal identifying information of individuals who criticize the government anonymously online, chill participation in public discourse. The public interest in maintaining robust political discourse online is strong and would be served by enjoining Investigation 18.

IV. Class certification is warranted.

Plaintiffs have concurrently moved for class certification. While that motion is pending, this Court should provisionally certify the following class to grant preliminary injunctive relief:

> **Investigation 18 Class:** All persons whose identity or subscriber information has been or will be requested from their electronic communication service providers (including social media companies) by a grand jury subpoena issued as part of Investigation 18.

"Plaintiffs … need only provisional class certification in order for the Court to grant their preliminary injunction." *Damus v. Nielson*, 313 F. Supp. 3d 317, 329 (D.D.C. 2018). Although "[i]n granting such provisional certification, the Court must still satisfy itself that the requirements of Rule 23 have been met," the Court's "analysis is tempered . . . by the understanding that such certifications may be altered or amended before the decision on the merits." *Id.* (citation omitted). This Court has provisionally certified class actions for purposes of granting a preliminary injunction on numerous occasions. *See, e.g., L.G.M.L. v. Noem*, 800 F.Supp.3d 100, 131 (D.D.C.

Sept. 18, 2025) (provisionally certifying class for purpose of granting preliminary injunction); *Charles H. v. District of Columbia*, No. 1:21-cv-00997 (CJN), 2021 WL 2946127, at *14 (D.D.C. June 16, 2021) (same); *P.J.E.S. by and through Escobar Francisco v. Wolf*, 502 F. Supp. 3d 492, 520–21 (D.D.C. 2020) (same); *Damus*, 313 F. Supp. 3d at 328–35 (same); *Kirwa v. U.S. Dep't of Def.*, 285 F. Supp. 3d 21, 44 (D.D.C. 2017) (same); R.I.L.–R., 80 F. Supp. 3d 164, 191 (D.D.C. 2015) (same). The Court should do the same here.

Plaintiffs' concurrently filed motion for class certification and accompanying exhibits, which are incorporated by reference here, demonstrate that the proposed class satisfies the requirements of Rule 23(a) and (b)(2). The class is sufficiently numerous, Fed. R. Civ. P. 23(a)(1), as it comprises at least 35 individuals, and likely many more. Pls.' Mot. for Class Cert. § I.A. The class also satisfies the commonality requirement, Fed. R. Civ. P. 23(a)(2), because the key legal issues in this action—including whether Investigation 18 was instituted and is being conducted in bad faith; whether Investigation 18 was instituted and is being conducted in retaliation for protected speech; whether Investigation 18 was instituted and is being conducted to deter protected speech critical of the Administration; and whether grand jury subpoenas can properly issue to further a bad-faith or retaliatory grand jury investigation—are "generally applicable to the class." *Steele v. United States*, 159 F. Supp. 3d 73, 81 (D.D.C. 2016) (citation omitted). Pls.' Mot. for Class Cert. § I.B. The class also satisfies the typicality requirement in Rule 23(a)(3) because the individual Plaintiffs' claims arise from the same course of conduct responsible for the claims of putative class members. Pls.' Mot. for Class Cert. § I.C. Finally, the class satisfies the adequacy requirement in Rule 23(a)(4) because Plaintiffs do not have any antagonistic or competing interests with unnamed members of the class. Pls.' Mot. for Class Cert. § I.D. Plaintiffs and putative class

members have also suffered the same injury arising out of Defendants' pursuance of Investigation 18.

Provisional class certification under Rule 23(b)(2) is appropriate because Defendants are attempting to unmask Plaintiffs and other anonymous speakers under Investigation 18 in violation of their First Amendment rights, and absent the relief requested here will continue to do so, and the injunctive and declaratory relief Plaintiffs seek would benefit the entire class. Pls.' Mot. for Class Cert. § II. Finally, Plaintiffs' counsel are qualified to serve as counsel for the provisionally certified class. *Id.* at § III.

CONCLUSION

For the foregoing reasons, this Court should provisionally certify Plaintiffs' proposed class and grant the requested preliminary injunction as to Plaintiffs and the proposed class.

Respectfully submitted,

Laura Moraff (NY Bar No. 5929690)*
Nathan Freed Wessler (NY Bar No. 4878880)*
American Civil Liberties Union Foundation
125 Broad Street, 18th Floor
New York, NY 10018
(212) 549-2500
lauramoraff@aclu.org

/s/ Laura K. Follansbee
Laura K. Follansbee (D.C. Bar No. 1782046)
Scott Michelman (D.C. Bar No. 1006945)
Arthur B. Spitzer (D.C. Bar No. 235960)
American Civil Liberties Union Foundation of the District of Columbia
529 14th Street NW, Suite 420

Washington, D.C. 20045
(202) 457-0800
lfollansbee@acludc.org

Jacob A. Snow (CA Bar No. 270988)*
Adriana Herrera (CA Bar No. 368812)*
American Civil Liberties Union Foundation of Northern California, Inc.
39 Drumm Street
San Francisco, CA 94111
(415) 621-2493
jsnow@aclunc.org

*Pro Hac Vice Application Forthcoming