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8  
 9 UNITED STATES DISTRICT COURT  
 10 FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 Z.A., a minor, by and through their parent, A.A.,  
 12 et al.

13 Plaintiffs,

14 v.

15 TODD BLANCHE, et al.,

16 Defendants,

No. 5:26-cv-04998-PCP

**DEFENDANTS' RESPONSE TO MOTION  
 FOR A TEMPORARY RESTRAINING  
 ORDER AND AN ORDER TO SHOW  
 CAUSE**

Hearing Date: June 24, 2026  
 Hearing Time: 2:00 p.m.  
 Courtroom: 8

Hon. P. Casey Pitts  
 United States District Judge

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## INTRODUCTION

1  
2 Plaintiffs make an extraordinary and unprecedented request of this Court: issue an injunction  
3 prohibiting compliance with a grand jury subpoena they say was issued by a different district court.  
4 Plaintiffs do not offer a *single past example* of such an order. That is because grand jury subpoenas are  
5 subject to judicial supervision, but the supervising court is the one that issues the subpoena. Indeed, “[t]he  
6 grand jury is an arm of the court.” *Levine v. United States*, 362 U.S. 610, 617 (1960). This Court can no  
7 more review any proceedings in the Northern District of Texas than that court can review this Court’s  
8 actions. If Plaintiffs wish to seek quashal of a subpoena they say was issued by the Northern District of  
9 Texas, they are free to move to quash in that court.

10 Plaintiffs’ choice to instead file a collateral civil action in this Court, and to seek a temporary  
11 restraining order, leaves their request without precedent. It also makes them unable to meaningfully  
12 support their Fifth and First Amendment claims. Plaintiffs, this Court, and the Lucile Salter Packard  
13 Children’s Hospital at Stanford (LPCH) lack basic facts to meaningfully evaluate questions about an  
14 alleged grand jury subpoena, and grand jury secrecy prevents the Department from even confirming or  
15 denying the existence of a grand jury subpoena. *See* Fed. R. Crim. P. 6(e). And Plaintiffs do not even  
16 claim knowledge of other grand jury subpoenas they believe exist, leaving them unable to show that even  
17 provisional class certification is permissible.

18 Nor do the non-merits considerations favor Plaintiffs. Their irreparable harm theory depends on  
19 *public* disclosure of their medical records or transgender status, ignoring the alleged grand jury context.  
20 And the public interest and balance of equities decisively favor permitting grand juries to investigate  
21 whether crimes have been committed.

## BACKGROUND

22  
23 Plaintiffs claim that a federal grand jury in the Northern District of Texas issued a subpoena to  
24 LPCH directing the hospital to produce certain records related to treatment of minor patients with gender  
25 dysphoria. Pursuant to Federal Rule of Criminal Procedure 6(e), the Department is not presently permitted  
26 to confirm or deny this assertion. Plaintiffs concede that “the nature of any alleged criminal conduct under  
27 investigation is unknown[.]” TRO Mot. 4.

28 According to Plaintiffs, on June 3, LPCH disclosed that it had received a grand jury subpoena

1 “that is almost identical” to a grand jury subpoena allegedly issued to New York University’s Langone  
2 Hospitals. TRO Mot. 4. Several families of children who received treatment from LPCH during the time  
3 period allegedly covered by the subpoena then sued LPCH, seeking a temporary restraining order to bar  
4 disclosure of their medical records to United States pursuant to the alleged subpoena. *See* ECF No. 3.  
5 After the Court denied that motion, *see* ECF No. 40, Plaintiffs filed an amended complaint naming the  
6 Department of Justice and Acting Attorney General as defendants. *See* FAC, ECF No. 41.

7 Plaintiffs now seek a temporary restraining order barring the Department from “requesting,  
8 receiving, producing, transmitting, disclosing, or otherwise obtaining” their medical records pursuant to  
9 the alleged LPCH subpoena or “any substantially similar subpoena issued to any California health care  
10 provider[.]” ECF No. 46-7 at 1. Plaintiffs also seek certification of a class encompassing certain patients  
11 from all California healthcare institutions, as well as a subclass of certain LPCH patients. *See* ECF No. 45;  
12 FAC ¶¶ 57-58.

### 13 ARGUMENT

#### 14 This Court Cannot Enjoin a Grand Jury Supervised By a Different Federal District Court.

15 A challenge to a federal grand jury subpoena belongs in the district court supervising the grand  
16 jury that issued the subpoena, not in a separate federal district through collateral civil litigation. The  
17 Federal Rules of Criminal Procedure expressly govern all proceedings in criminal cases, including  
18 proceedings related to grand jury investigations, and Rule 17(c) provides the exclusive mechanism for  
19 challenging grand jury subpoenas. “The court” which has the ongoing authority to supervise the grand  
20 jury investigation and litigate claims related to its process—and which, under Rule 6(e), is responsible  
21 for determining any requests for disclosure of grand jury materials—is the only appropriate court to  
22 decide Plaintiffs’ claims. *See* Fed. R. Crim. P. 17(c)(2) (“On motion made promptly, *the court* may quash  
23 or modify the subpoena if compliance would be unreasonable or oppressive.”); *see id.* R. 17(c)(1) (using  
24 “[t]he court” to refer to the issuing court); *id.* R. 17(a) (“A subpoena must state *the court’s* name and the  
25 title of the proceeding, include the seal of *the court*, and command the witness to attend and testify at the  
26 time and place the subpoena specifies.” (emphasis added)). “Grand juries are subject to judicial control  
27 and subpoenas to motions to quash”—not collateral civil litigation. *Branzburg v. Hayes*, 408 U.S. 665,  
28 708 (1972). Granting Plaintiffs’ request would circumvent the rules of criminal procedure and encroach

1 on the authority of the supervising district court over its own process. Not surprisingly, Plaintiffs have  
2 not cited a single case upholding this novel procedure.

3 The Supreme Court has recognized that grand jury subpoenas remain subject to the supervision  
4 of the issuing court overseeing the grand jury investigation. *United States v. R. Enters., Inc.*, 498 U.S.  
5 292, 298-301 (1991) (A “grand jury subpoena issued through normal channels” is presumed reasonable,  
6 and motions to quash are evaluated by the supervising court in light of the grand jury’s broad investigative  
7 authority); *United States v. Williams*, 504 U.S. 36, 47 (1992) (recognizing historic independence of the  
8 grand jury and the limited role of courts in interfering with grand jury investigations). Courts likewise  
9 have recognized that challenges to grand jury subpoenas belong before the issuing court supervising the  
10 grand jury investigation. *See, e.g., United States v. McClintock*, 748 F.2d 1278, 1285 (9th Cir. 1984)  
11 (district court may exercise its supervisory power over grand jury proceedings only where necessary to  
12 deter official misconduct and protect judicial integrity). Disputes concerning compliance with a federal  
13 grand jury subpoena—including motions to quash, requests for protective relief, or assertions of  
14 privilege—must be directed to the issuing court, not litigated collaterally in another federal district.

15 It is easy to see why the Criminal Rules channel challenges to grand jury subpoenas to the district  
16 where the criminal investigation or prosecution is being conducted. Permitting a separate federal district  
17 court to entertain collateral challenges to a subpoena issued by a grand jury sitting in another district  
18 would improperly intrude upon the issuing court’s supervisory authority, create the risk of inconsistent  
19 rulings among federal courts, and disrupt the orderly administration of federal criminal investigations.  
20 Only by having all such questions addressed by the supervisory court can consistency be ensured and the  
21 grand jury’s overall conduct be effectively monitored. *See Fed. R. Crim. P. 6(e)* (grand jury secrecy  
22 requirement). Indeed, the risk of inconsistent rulings among federal courts would be particularly  
23 pronounced for grand jury subpoenas if they could be challenged outside the issuing court, as grand jury  
24 subpoenas can be served “at any place within the United States,” *Fed. R. Crim. P. 17(e)*, while subpoenas  
25 contemplated by Civil Rule 45 have a more limited geographic reach. *See Fed. R. Civ. P. 45(c)* (subpoena  
26 “may command a person to attend a trial, hearing, or deposition” or produce documents or things only  
27 within specified geographic bounds). These distinct features of grand jury subpoenas explain why they  
28 are subject to challenge only in the court that issued the subpoena, unlike other subpoenas that can be

1 challenged in “the district where compliance is required.” Fed. R. Civ. P. 45(d).

2 More generally, the Supreme Court has emphasized that the grand jury’s investigative powers are  
3 necessarily broad and courts should avoid unnecessary interference with its functioning. *Branzburg*, 408  
4 U.S. at 688 (“the longstanding principle that ‘the public ... has a right to every man’s evidence’” applies  
5 with particular force in the grand jury context); *R. Enters.*, 498 U.S. at 297 (grand jury’s investigative  
6 power must be broad if its responsibilities are to be adequately discharged). Those principles are  
7 undermined if a non-issuing district court attempts to supervise or restrain compliance with a grand jury  
8 subpoena issued under the authority of another federal court in an ongoing criminal investigation.

9 Even if the text of Rule 17 did not foreclose collateral attacks on grand jury process, principles of  
10 comity and judicial restraint would strongly weigh against this Court issuing an injunction that interferes  
11 with a grand jury subpoena allegedly issued by a federal grand jury sitting in another district. Such an  
12 injunction would improperly intrude upon proceedings pending before another federal court and  
13 undermine the orderly administration of criminal justice. Moreover, such relief would raise serious  
14 separation-of-powers concerns because it would effectively restrain a lawful Executive Branch criminal  
15 investigation through collateral civil process. *See Cheney v. U.S. Dist. Ct. for D.C.*, 542 U.S. 367, 381-  
16 82 (2004) (recognizing separation-of-powers concerns arising from judicial intrusion into Executive  
17 Branch functions). Just as the Northern District of Texas does not superintend this Court’s grand jury  
18 proceedings, this Court should decline Plaintiffs’ inappropriate attempt to place this Court in the position  
19 of superintending alleged grand jury proceedings in the Northern District of Texas via coercive process  
20 issued to the United States or Hospital Defendants.

21 Plaintiffs cite an out-of-circuit decision, *New York Times v. Gonzales*, 459 F.3d 160 (2d Cir.  
22 2006), as permitting such interference. They claim that *Gonzales* amounts to “confirm[ation] that it is  
23 appropriate for the Court to consider Plaintiffs’ challenges on the merits notwithstanding the pendency  
24 of the Texas grand jury proceeding.” TRO Mot. 8. Not so. That outlier decision is unpersuasive and  
25 distinguishable. To start, *Gonzales* did not consider the comity problems of one court interfering with  
26 another court’s grand jury, nor did it consider Rule 17’s limitations on where grand jury subpoenas may  
27 be challenged. Importantly, *Gonzales* considered only the possibility of a declaratory judgment, which is  
28 a “much milder” remedy than the injunction Plaintiffs seek. *Redd v. Guerrero*, 84 F.4th 874, 888 (9th

1 Cir. 2023) (citation omitted). Its reasoning therefore relied substantially on the specific text and equitable  
2 underpinnings of the Declaratory Judgment Act—it did not purport to opine on the propriety of an  
3 injunction or any other form of relief. *See Gonzales*, 459 F.3d at 165-67. Plaintiffs do not request a  
4 declaratory judgment as part of their TRO motion, nor could they. Neither rule nor statute recognizes a  
5 preliminary declaratory judgment. Instead, a declaratory judgment is just that—a judgment. This case is  
6 not close to a posture conducive to a final judgment: Plaintiffs filed their complaint less than two weeks  
7 ago, Defendants have not yet filed a responsive pleading, and neither side has filed a dispositive motion.

8 Moreover, in *Gonzales*, the plaintiffs professed that it was “unknown whether subpoenas have  
9 been issued to telephone carriers or not, and if so, whether the carriers have already complied.” *Id.* at 167.  
10 That meant there was a prospect that the declaration did not interfere with any grand jury subpoenas and  
11 that alternative forms of relief, such as moving to quash, were unavailable. *Id.* (observing that “a motion  
12 to quash is not available if the subpoena has not been issued”). Here, by contrast, Plaintiffs profess  
13 certainty that a grand jury subpoena has issued, and unlike the *Gonzales* plaintiffs, they have simply opted  
14 not to avail themselves of the option to challenge the alleged subpoena in the issuing court. If anything,  
15 the fact that Plaintiffs cite *Gonzales* as their best case simply illustrates that they are asking the Court to  
16 take an unprecedented step by issuing an injunction forbidding compliance with another district court’s  
17 grand jury subpoena. This Court should decline to do so.

#### 18 **Plaintiffs Have No Cause of Action to Seek an Injunction**

19 Plaintiffs point to neither an express congressional waiver of sovereign immunity nor any  
20 statutory cause of action permitting them to sue the federal government or to seek any remedies against  
21 the federal government. Ordinarily, a plaintiff seeking to challenge a grand jury subpoena does so through  
22 a motion to quash filed in the court that issued the subpoena, which the court entertains as a miscellaneous  
23 action. But Plaintiffs have filed a freestanding complaint, not a motion to quash; and they ultimately seek  
24 declaratory and injunctive relief, not quashal. *See* FAC at 31-32 (Prayer for Relief). That creates novel  
25 problems.

26 To obtain a remedy against the United States, a plaintiff must identify a waiver of sovereign  
27 immunity permitting the action and the remedy the plaintiff seeks. *See, e.g., United States v. Mitchell*,  
28 463 U.S. 206, 212 (1983) (“It is axiomatic that the United States may not be sued without its consent and

1 that the existence of consent is a prerequisite for jurisdiction.”). Only Congress may waive the sovereign  
2 immunity of the United States. *Block v. North Dakota ex rel. Bd. of Univ. and School Lands*, 461 U.S.  
3 273, 287 (1983) (“The basic rule of federal sovereign immunity is that the United States cannot be sued  
4 at all without the consent of Congress.”); *United States v. Testan*, 424 U.S. 392, 399 (1976) (federal  
5 sovereign immunity persists “except as Congress has consented to” a waiver).

6 Likewise, a plaintiff who seeks a remedy from a court must have a cause of action in order to  
7 obtain that remedy. Only Congress can create such a private right of action. *See, e.g., FS Credit*  
8 *Opportunities Corp. v. Saba Cap. Master Fund, Ltd.*, 2026 WL 1686059, at \*2 (June 11, 2026)  
9 (“Congress, not the judiciary, decides who may enforce the law.”); *id.* at \*3-4, \*6.

10 To the extent they would seek to do so, Plaintiffs cannot rely on any of the usual recourses. For  
11 example, the Administrative Procedure Act is no help to them because it permits challenges to final  
12 agency action, but Plaintiffs identify nothing resembling a final agency action. A grand jury subpoena  
13 cannot be the final agency action: Such subpoenas are issued by a court, so they fall well outside the  
14 APA. *See* 5 U.S.C. § 701(b)(1)(B) (excluding “the courts of the United States” from the definition of  
15 “agency”); *Levine*, 362 U.S. at 617 (“The grand jury is an arm of the court.”). Likewise, the Declaratory  
16 Judgment Act cannot substitute for a waiver of sovereign immunity or a cause of action. “The Declaratory  
17 Judgment Act does not provide a cause of action when a party ... lacks a cause of action under a separate  
18 statute and seeks to use the Act to obtain affirmative relief[.]” *City of Reno v. Netflix, Inc.*, 52 F.4th 874,  
19 878 (9th Cir. 2022), nor does it “constitute an independent basis for jurisdiction[.]” *Morongo Band of*  
20 *Mission Indians v. Cal. State Bd. of Equalization*, 858 F.2d 1376, 1382-83 (9th Cir. 1988). Plaintiffs  
21 cannot turn to the All Writs Act, either. “[T]he All Writs Act does not confer jurisdiction on the federal  
22 courts[.]” *Syngenta Crop Prot., Inc. v. Henson*, 537 U.S. 28, 33 (2002). Nor does it create a cause of  
23 action. *See, e.g., Langadinos v. Wash. State Bar Ass’n*, 2025 WL 917199, at \*3 (W.D. Wash. Mar. 26,  
24 2025) (“The Act does not create a cause of action[.]”). Last, the Federal Rules of Civil or Criminal  
25 Procedure likewise offer no cause of action or waiver of sovereign immunity, since they cannot  
26 themselves create any “entitlement[] to relief.” *Shady Grove Ortho. Assocs., P.A. v. Allstate Ins. Co.*, 559  
27 U.S. 393, 408 (2010) (plurality); *see* 28 U.S.C. § 2072(b) (permitting rules only if they do not “abridge,  
28 enlarge or modify any substantive right”).

1 **Plaintiffs' Fifth Amendment Claim Fails.**

2 Plaintiffs' Fifth Amendment claim rests on the novel proposition that informational-privacy  
3 principles may be invoked to limit compliance with lawful grand jury subpoenas. To our knowledge, no  
4 court has applied the doctrine in that manner. The authorities on which Plaintiffs rely arose in different  
5 contexts involving government collection, maintenance, or dissemination of personal information and did  
6 not address the government's authority to obtain evidence through compulsory process in a criminal  
7 investigation. In any event, even assuming substantive due process could constrain a grand jury subpoena  
8 in some exceptional case, such a claim can only be assessed by the court supervising the grand jury—  
9 because grand jury secrecy means that only the supervising court could balance the asserted privacy  
10 interest against the grand jury's need for the evidence and the government's compelling interest in  
11 compliance. In this posture, Plaintiffs cannot show likely success on their Fifth Amendment claim.

12 The Supreme Court has never held that the Fifth Amendment protects a right to informational  
13 privacy. And in the few cases where the Court assumed that such a right exists, it has underscored the  
14 limited nature of any such doctrine. In *Whalen v. Roe*, the Court upheld a state law requiring the collection  
15 of patient-identifying prescription information, emphasizing that “[r]equiring such disclosures to  
16 representatives of the State having responsibility for the health of the community, does not automatically  
17 amount to an impermissible invasion of privacy.” 429 U.S. 589, 600-06 (1977). In *Nixon v. Administrator*  
18 *of General Services*, the Court upheld a federal statute requiring former President Nixon to turn over  
19 presidential papers and recordings for government review, relying in part on safeguards against undue  
20 dissemination of private materials. 433 U.S. 425, 457-59 (1977). And most recently, in *NASA v. Nelson*,  
21 the Court rejected the claim because the information-gathering practices were accompanied by  
22 protections against public disclosure. 562 U.S. 134, 146-48, 155-59 (2011). Here, too, grand jury secrecy  
23 represents a robust protection against public disclosure. *See* Fed. R. Crim. P. 6(e); *infra* p. 24.

24 The Ninth Circuit's decisions likewise concern government disclosure or misuse of personal  
25 information after it was obtained, not the government's authority to compel production of evidence during  
26 a criminal investigation. *Davis v. Bucher*, 853 F.2d 718, 719-21 (9th Cir. 1988); *Russell v. Gregoire*, 124  
27 F.3d 1079, 1093-94 (9th Cir. 1997); *Seaton v. Mayberg*, 610 F.3d 530, 535-39 (9th Cir. 2010). Those  
28 cases recognize, at most, a limited and context-specific privacy interest evaluated under a balancing

1 framework. None suggests that informational-privacy principles authorize a court to bar compliance with  
2 an otherwise valid grand jury subpoena in a collateral proceeding.

3 Indeed, the standards governing informational-privacy claims further illustrate why Plaintiffs'  
4 novel claim is doomed to fail. When assessing a substantive-due-process challenge to executive action,  
5 courts apply a uniquely demanding standard: liability attaches only if the challenged conduct is so  
6 “egregious” that it “shocks the conscience.” *County of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998).  
7 And because this standard can be met “in only the most extreme circumstances,” substantive-due-process  
8 liability for executive action “typically involv[es] some violation of physical liberty or personal physical  
9 integrity.” *Becker v. Kroll*, 494 F.3d 904, 923 (10th Cir. 2007). Grand jury subpoenas as part of a criminal  
10 investigation bear little resemblance to these cases.

11 The substantive-due-process framework fits Plaintiffs’ challenge poorly for other reasons. The  
12 Supreme Court’s “concern with preserving the constitutional proportions of substantive due process  
13 demands an exact analysis of circumstances before any abuse of power is condemned as conscience  
14 shocking.” *Lewis*, 523 U.S. at 850. This analysis usually requires a finding of intent. *Id.* at 849 (“conduct  
15 intended to injure in some way unjustifiable by any government interest is the sort of official action most  
16 likely to rise to the conscience-shocking level”). Plaintiffs’ attempt to apply that test in a collateral  
17 proceeding “ignores that grand jury proceedings are subject to strict secrecy requirements.” *R. Enters.*,  
18 498 U.S. at 299. Even if Rule 6(e) were no bar, “[r]equiring the Government to explain in too much detail  
19 the particular reasons underlying a subpoena threatens to compromise ‘the indispensable secrecy of grand  
20 jury proceedings.’” *Id.* (citation omitted). This is precisely why the sort of objection that Plaintiffs raise  
21 here must be presented, if at all, to the supervising court under the procedures set out in Rule 17. *See*  
22 *supra* pp. 2-4.

23 No ad hoc interest-balancing is required to conclude that Plaintiffs may not invoke their privacy  
24 interests to veto an alleged grand jury investigation. “[M]ost situations in which a government actor  
25 accesses an individual’s personal information will not require the application of a balancing test to  
26 determine whether a due process violation has occurred.” *Hancock v. County of Rensselaer*, 882 F.3d 58,  
27 66 (2d Cir. 2018). To the extent a grand jury’s receipt of evidence implicates constitutionally protected  
28 privacy interests, such “a breach of privacy takes a form courts have previously approved.” *Id.* Both the

1 Ninth Circuit and Supreme Court have consistently held that a grand jury may take receipt of persons’  
2 private information, constitutionally protected privacy interests notwithstanding. “There is no general  
3 right to privacy before the grand jury.” *In re Grand Jury Proceedings*, 801 F.2d 1164, 1169 (9th Cir.  
4 1986). “The function of the grand jury is to inquire into *all* information that might possibly bear on its  
5 investigation until it has identified an offense or has satisfied itself that none has occurred.” *R. Enters.*,  
6 498 U.S. at 297 (emphasis added). Thus, “[a] grand jury investigation ‘is not fully carried out until *every*  
7 available clue has been run down and *all* witnesses examined in every proper way to find if a crime has  
8 been committed.’” *Branzburg*, 408 U.S. at 701 (citation omitted) (emphasis added); *see also, e.g., Blair*  
9 *v. United States*, 250 U.S. 273, 282 (1919) (“It is a grand inquest, a body with powers of investigation  
10 and inquisition, the scope of whose inquiries is not to be limited narrowly by questions of propriety or  
11 forecasts of the probable result of the investigation, or by doubts whether any particular individual will  
12 be found properly subject to an accusation of crime.”). This explains why “a witness has no right of  
13 privacy before the grand jury[,]” which is entitled to “responses [that] might prove embarrassing or result  
14 in an unwelcome disclosure of his personal affairs.” *United States v. Calandra*, 414 U.S. 338, 353 (1974).

15 In short, the Supreme Court has repeatedly reaffirmed the grand jury’s broad constitutional  
16 authority to compel evidence during its investigation. And it has repeatedly declined to adopt “[a]ny  
17 holding that would saddle a grand jury with minitrials and preliminary showings [that] would assuredly  
18 impede its investigation and frustrate the public’s interest in the fair and expeditious administration of  
19 the criminal laws.” *United States v. Dionisio*, 410 U.S. 1, 17 (1973). Accepting Plaintiffs’ invitation to  
20 subject grand jury subpoenas to a “multifactor test” focused on interest balancing “would invite  
21 procedural delays and detours while courts evaluate the relevancy and admissibility of documents sought  
22 by a particular subpoena.” *R. Enters.*, 498 U.S. at 298. And such an approach, particularly in this Court,  
23 would improperly “compromise ‘the indispensable secrecy of grand jury proceedings’” by “[r]equiring  
24 the Government to explain in too much detail the particular reasons underlying a subpoena.” *Id.* at 299.

25 Plaintiffs’ reliance on cases applying multifactor balancing tests to administrative subpoenas,  
26 employment records, or civil disclosure requirements is therefore misplaced. Whatever force those  
27 considerations may have in other contexts, neither the Supreme Court nor the Ninth Circuit has held that  
28 informational privacy authorizes a court to enjoin compliance with an otherwise lawful grand jury

1 subpoena. Extending the doctrine in that manner would be irreconcilable with the grand jury’s historically  
2 broad investigative authority.

3 Finally, even if balancing were appropriate and somehow possible in this venue despite grand jury  
4 secrecy, the balance would easily favor the government. Plaintiffs’ claimed expectation of privacy in  
5 medical records held by third parties is incompatible with the disclosures that hospitals (including LPCH)  
6 provide to patients and their families. LPCH expressly notifies patients that it may disclose personal  
7 health information for a variety of reasons, including for law enforcement purposes. *See* Ex. A, Stanford  
8 Medicine Notice of Privacy Practices at 6 (“lawsuits and disputes” or “law enforcement”).<sup>1</sup> More still,  
9 HIPAA “regulations themselves make clear that any privacy interest patients have in their medical  
10 records is trumped by a grand jury subpoena that is ‘relevant and material to a legitimate law enforcement  
11 inquiry.’” *In re Grand Jury Subpoena John Doe No. A01-209*, 197 F. Supp. 2d 512, 515 (E.D. Va. 2002)  
12 (quoting 45 C.F.R. § 164.512(f)(1)(ii)) (denying motion to quash grand jury subpoena for medical  
13 records). Given these disclosures, the notion that patients could reasonably expect their medical  
14 information to be shielded from a lawful federal subpoena is fanciful. Whatever privacy interest may  
15 persist cannot overcome the government’s “compelling interest in the grand jury’s investigation into  
16 possible violations of federal law.” *In re Grand Jury Subpoena No. 16-03-217*, 875 F.3d 1179, 1191 (9th  
17 Cir. 2017); *see also, e.g., Dole v. Serv. Emp. Union, ALF-CIO, Local 280*, 950 F.2d 1456, 1461 (9th Cir.  
18 1991) (“[T]here is little doubt that the Department’s purpose of investigating possible criminal violations  
19 of [a federal law] serves a compelling governmental interest”).

### 20 **Plaintiffs’ First Amendment Claim Fails.**

21 As a fallback, Plaintiffs repackage their informational privacy claim as an alleged violation of  
22 their First Amendment rights. They claim the alleged subpoena will chill putative class members’ speech  
23 with their doctors and is therefore unlawful. Plaintiffs’ First Amendment claim fails several times over.

24 A. To start, Plaintiffs lack Article III standing because it is well-established that “[a]llegations of  
25 a subjective ‘chill’ are not an adequate substitute for a claim of specific present objective harm or a threat  
26 of specific future harm[.]” *Laird v. Tatum*, 408 U.S. 1, 13-14 (1972). The facts of *Laird* are instructive.

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27  
28 <sup>1</sup> Available at <https://perma.cc/DN8F-WJEA> (effective February 16, 2026).

1 There, respondents claimed “the very existence of the Army’s data-gathering system produces a  
2 constitutionally impermissible chilling effect upon the exercise of their First Amendment rights.” *Id.* at  
3 13. The Court rejected that theory. It distinguished cases recognizing First Amendment injuries based on  
4 chill, explaining that “[i]n none of these cases . . . did the chilling effect arise merely from the individual’s  
5 knowledge that a governmental agency was engaged in certain activities or from the individual’s  
6 concomitant fear that, armed with the fruits of those activities, the agency might in the future take some  
7 other and addition[a]l action detrimental to that individual.” *Id.* at 11. Instead, in those cases, “the  
8 challenged exercise of governmental power was regulatory, proscriptive, or compulsory in nature, and  
9 the complainant was either presently or prospectively subject to the regulations, proscriptions, or  
10 compulsions that he was challenging.” *Id.* A chilling effect arising from respondents’ “speculative  
11 apprehensiveness that the Army may at some future date misuse the information in some way that would  
12 cause direct harm to respondents” did not establish standing. *Id.* at 13-14.

13 *Laird* controls here. Because the alleged subpoena does not compel or regulate Plaintiffs, their  
14 allegations of subjective chill are “not an adequate substitute for a claim of specific present objective  
15 harm or a threat of specific future harm[.]” *Id.* at 14. Indeed, Plaintiffs’ asserted injury depends on the  
16 same attenuated chain *Laird* rejected: that the government may obtain information from someone else,  
17 may later misuse that information, and that the possibility of such future misuse may chill Plaintiffs’  
18 willingness to speak with others. As in *Laird*, Plaintiffs lack Article III standing.<sup>2</sup>

19 **B.** For related reasons, Plaintiffs’ First Amendment claim also fails on the merits. The alleged  
20 subpoena does not infringe any First Amendment right enjoyed by Plaintiffs. Disclosure of medical  
21 records to a federal grand jury does not interfere with Plaintiffs’ freedom “to speak openly with” their  
22 providers, or with the rights of free speech or association of individual doctors. The alleged subpoena  
23 does not, directly or indirectly, regulate what patients may say or what doctors may advise. Nor does  
24 disclosure in response to a grand jury subpoena—subject to the strict secrecy protections of Rule 6(e)—  
25

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26  
27 <sup>2</sup> *Laird* also forecloses any attempt by Plaintiffs assert the speech rights of hospitals or doctors.  
28 *See* 408 U.S. at 13 & n.7 (“a litigant has standing to seek redress for injuries done to him, but may not  
seek redress for injuries done to others”). In any event, Plaintiffs’ bald assertion that the alleged  
subpoena will cause doctors to “limit their communications with their patients” lacks any support in the  
record. TRO Mot. 23.

1 expose Plaintiffs’ records to public scrutiny, impose civil or criminal liability on Plaintiffs for speaking  
2 with their doctors, or attach any other penalty to seeking or providing medical advice. Disclosure under  
3 these circumstances involves no “significant encroachment upon personal liberty,” *i.e.*, “the threat of  
4 substantial government encroachment upon important and traditional aspects of individual freedom” that  
5 is “neither speculative nor remote.” *Bates v. City of Little Rock*, 361 U.S. 516 (1960); *Meese v. Keene*,  
6 481 U.S. 465, 472 (1987) (“While the governmental action need not have a direct effect on the exercise  
7 of First Amendment rights . . . it must have caused or must threaten to cause a direct injury to the  
8 plaintiffs.”).

9       Indeed, the Supreme Court has held the First Amendment does not shield even the recipient of an  
10 administrative subpoena from disclosing information that incidentally affects speech interests. *See Univ.*  
11 *of Pa. v. EEOC*, 493 U.S. 182, 200 (1990). There, the Supreme Court rejected a First Amendment  
12 privilege against disclosure of confidential tenure-review materials in response to an administrative  
13 subpoena. The university argued that such disclosure would have “a chilling effect on candid evaluations  
14 and discussions,” thereby impairing its First Amendment right to academic freedom. *Id.* at 196-97. The  
15 Court disagreed, concluding that the alleged injury to First Amendment interests was too “remote and  
16 attenuated” to “infringe any First Amendment right enjoyed by” the university. *Id.* at 200-201. Plaintiffs’  
17 theory is still more attenuated because Plaintiffs challenge the incidental effects of compulsory process  
18 issued to a third party. In these circumstances, Plaintiffs have not established that the alleged grand jury  
19 subpoena infringes any interest protected by the First Amendment.<sup>3</sup>

20       C. Even if Plaintiffs’ First Amendment rights were somehow implicated by an alleged grand jury  
21 subpoena directed at a third party, the Supreme Court and Ninth Circuit have repeatedly rejected efforts  
22 to convert asserted First Amendment interests into a freewheeling constitutional privilege against  
23 compulsory process. In *Branzburg v. Hayes*, the Supreme Court held that the First Amendment did not  
24 excuse reporters from appearing before a grand jury and answering questions relevant to a criminal

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25  
26       <sup>3</sup> Plaintiffs’ confusing assertion that the alleged subpoena “discriminates based on ‘viewpoint’”  
27 fails for this threshold reason. TRO Mot. 23 (citation omitted). This claim also lacks merit for other  
28 reasons, including that a grand jury subpoena does not regulate speech based on viewpoint merely  
because it uses conduct-based definitions that may turn on the purpose of a medical intervention.  
Otherwise, any subpoena for records pertaining to a particular kind of expressive conduct could be  
recast as a content- or viewpoint-based speech restriction. For good reason, that is not the law.

1 investigation, even though doing so could reveal confidential sources and thereby affect newsgathering.  
2 408 U.S. 665, 689-90 (1972). The Court recognized that “news gathering is not without its First  
3 Amendment protections,” *id.* at 707, but held that those protections do not relieve a witness of the  
4 ordinary obligation to provide evidence to a grand jury. The public “has a right to every man’s evidence,”  
5 and that principle “is particularly applicable to grand jury proceedings.” *Id.* at 688.

6 The Ninth Circuit applied that rule in *In re Grand Jury Subpoena No. 16-03-217*, 875 F.3d 1179  
7 (9th Cir. 2017). There, Glassdoor resisted a grand jury subpoena seeking identifying information for  
8 anonymous users, arguing that disclosure would infringe “users’ First Amendment right to speak and  
9 associate anonymously.” *Id.* at 1186. The Ninth Circuit rejected that claim. It explained that Glassdoor’s  
10 argument—that “forcing [it] to comply with the grand jury’s subpoena duces tecum will chill First  
11 Amendment-protected activity”—“is fundamentally the same argument the Supreme Court rejected in  
12 *Branzburg*.” *Id.* Indeed, “*Branzburg* . . . made clear that the First Amendment does not provide  
13 reporters—or anyone else—with a privilege against responding to a grand jury’s inquiries[,]” regardless  
14 of “whether the underlying claim is related to newsgathering, speech, or association.” *Id.* at 1187. “These  
15 are all First Amendment-protected activities, but none of them will prevent an individual from being  
16 required to cooperate with a good-faith grand jury investigation.” *Id.*

17 So too here. Because “*Branzburg* controls,” “the only question is whether there is evidence that  
18 the grand jury is acting in bad faith.” *Id.* at 1190. As already explained, however, Plaintiffs cannot  
19 possibly prove—and this Court cannot meaningfully assess—any grand jury’s intentions without access  
20 to the materials before it and an understanding of any investigation, underscoring why the Criminal Rules  
21 provide that a district court supervising a grand jury must be the one to hear any concerns about the  
22 legitimacy of the investigation or the grand jury’s good faith. *See supra* pp. 2-5. Plaintiffs’ First  
23 Amendment objection, if it is cognizable at all, must be presented to the allegedly supervising court in a  
24 motion to quash.<sup>4</sup>

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25  
26 <sup>4</sup> Indeed, Justice Powell’s concurrence in *Branzburg* expressly contemplates that First  
27 Amendment concerns should be channeled through a motion to quash presented to the supervising  
28 court. *See* 408 U.S. at 710 (Powell, J., concurring) (“[I]f the newsman is called upon to give  
information bearing only a remote and tenuous relationship to the subject of the investigation, or if he  
has some other reason to believe that his testimony implicates confidential source relationship without a  
(footnote cont’d on next page)

1           **D.** Plaintiffs’ citation to *First Choice Women’s Resource Centers, Inc. v. Davenport*, 146 S. Ct.  
 2 1114 (2026), is misplaced. This line of cases applies to situations where a “state authority . . . has  
 3 demanded private donor or member information.” *Id.* at 1125. In that context, the Supreme Court has  
 4 recognized that “compelled disclosure of affiliation with groups engaged in advocacy may constitute as  
 5 effective a restraint on freedom of association as [other] forms of governmental action.” *Ams. for*  
 6 *Prosperity Found. v. Bonta*, 594 U.S. 595, 606 (2021) (quoting *NAACP v. Alabama ex rel. Patterson*,  
 7 357 U.S. 449, 462 (1958)). But Plaintiffs do not even allege any comparable burden on protected  
 8 association. See FAC ¶¶ 130-46. Nor could they. The First Amendment protects only those individuals  
 9 engaged in *expressive* association, meaning that they have joined together to collectively express and  
 10 pursue the “views that brought them together” on “political, social, economic, educational, religious and  
 11 cultural” matters. *Roberts v. U.S. Jaycees*, 468 U.S. 609, 622-23 (1984). It does not constitutionalize  
 12 ordinary commercial, professional, or service-provider relationships merely because those relationships  
 13 involve communication. See *City of Dallas v. Stanglin*, 490 U.S. 19, 24-25 (1989); *IDK, Inc. v. Clark*  
 14 *Cnty.*, 836 F.2d 1185, 1195 (9th Cir. 1988). Plaintiffs thus have no expressive association claim available  
 15 to them. And nothing else in the *First Choice* line of cases transforms an alleged grand jury subpoena for  
 16 third-party medical records into a cognizable burden on protected association.

### **The Court Should Not Enter Classwide Relief**

#### **A. Absent class certification, the Court cannot grant relief to nonparties.**

17  
 18           Federal courts cannot issue relief “to *everyone* potentially affected by an allegedly unlawful act[.]”  
 19 regardless of party-status. *Trump v. CASA, Inc.*, 606 U.S. 831, 852 (2025). Instead, judicial remedies are  
 20 limited to parties. Prior to class certification, putative class members are nonparties. Unlike members of  
 21 a *certified* class, members of a *putative* class are not bound by any resulting judgment. See *Smith v. Bayer*  
 22 *Corp.*, 564 U.S. 299, 315 (2011) (“Neither a proposed class action nor a rejected class action may bind  
 23 nonparties.”); *Matsushita Elec. Indus. Co. v. Epstein*, 516 U.S. 367, 379 (1996) (“[A]ll members of the  
 24 class . . . are bound by the judgment entered in the action.”). Relief in favor of a putative class—unlike a  
 25 certified class—is thus relief issued for nonparties, and it thus exceeds “the maximum a court can  
 26

27  
 28 \_\_\_\_\_  
 legitimate need of law enforcement, he will have access to the court on a motion to quash and an appropriate protective order may be entered”).

1 provide.” 606 U.S. at 854.

2 Bearing this out, putative-class injunctions share many features of universal injunctions. Like a  
3 universal injunction, putative-class injunctions circumvent “Rule 23’s procedural protections and allow  
4 courts to create *de facto* class actions at will.” *CASA*, 606 U.S. at 849 (quotation omitted). Unlike rulings  
5 regarding certified classes, putative-class injunctions are plagued by the same asymmetry, which “equity  
6 abhors,” as universal injunctions, where unsuccessful plaintiffs can file seriatim lawsuits until they  
7 prevail, while unsuccessful defendants need only lose once. Elias Neibart, *The Rise of the All-Writs-Act-  
8 Putative-Class-Injunction?*, 77 Baylor L. Rev. 681, 705 (2025). And putative-class injunctions are unlike  
9 “[d]ecrees obtained on a bill of peace”—the historic analog to today’s class action, which “would bind  
10 all members of the group[.]” *CASA*, 606 U.S. at 848 (quotation omitted).

11 To be sure, the Supreme Court once authorized temporary relief for a putative class. *AARP v.*  
12 *Trump*, 605 U.S. 91 (2025). But *AARP* was decided before *CASA* made clear that relief to non-parties is  
13 beyond what a federal court can provide. And in *AARP*, the “temporary injunctive relief to the putative  
14 class” was necessary “in order to preserve [the Court’s] jurisdiction pending appeal.” *Id.* at 97. No such  
15 issue is present here. *Church of Scientology of Cal. v. United States*, 506 U.S. 9, 12-15 (1992) (compliance  
16 with subpoena does not moot challenge to subpoena). The Court should not read *AARP* to authorize a  
17 putative-class injunction.

### 18 **B. Plaintiffs fail to meet Rule 23’s standards.**

19 Plaintiffs seek provisional class certification. Proposed Order 1. Even “provisional” class  
20 certification requires full Rule 23 analysis. *Pablo Sequen v. Albarran*, 810 F. Supp. 3d 1084, 1121 (N.D.  
21 Cal. 2025) (citing *Mercado v. Noem*, 800 F. Supp. 3d 526, 559 (S.D.N.Y. 2025)). “The term ‘provisional’  
22 ... signal[s] that the certification will dissolve if the injunction does but does ‘not suggest the [Court]  
23 undertook less than a full Rule 23 analysis.’” *Id.* (quoting *Mercado*, 800 F. Supp. 3d at 559) (cleaned up).  
24 A plaintiff “must affirmatively demonstrate his compliance” with Rule 23. *Wal-Mart Stores, Inc. v.*  
25 *Dukes*, 564 U.S. 338, 350 (2011). As the Supreme Court has explained, “Rule 23 does not set forth a  
26 mere pleading standard.” *Id.* Instead, a “party seeking class certification must affirmatively demonstrate  
27 his compliance with the Rule—that is, he must be prepared to prove that there are *in fact* sufficiently  
28 numerous parties, common questions of law or fact, etc.” *Id.* The movant must do so by a preponderance

1 of the evidence. *White v. Symetra Assigned Benefits Serv. Co.*, 104 F.4th 1182, 1192 (9th Cir. 2024). And  
2 “certification is proper only if ‘the trial court is satisfied, after a rigorous analysis, that the prerequisites  
3 of Rule 23(a) have been satisfied.’” *Dukes*, 564 U.S. at 350-51 (quoting *Gen. Tel. Co. v. Falcon*, 457 U.S.  
4 147, 161 (1982)). “[A]ctual, not presumed, conformance with Rule 23(a) [is] indispensable.” *Falcon*, 457  
5 U.S. at 160.

6 Plaintiffs’ motion cannot bear that scrutiny. They fail to affirmatively show numerosity,  
7 commonality, typicality, and adequacy, and their proposed class falls outside Rule 23(b)(2).

8 **1. Numerosity.** Numerosity requires that the class be “so numerous that joinder of all members  
9 is impracticable[.]” Fed. R. Civ. P. 23(a)(1). Generally, a class of more than 40 members satisfies the  
10 numerosity requirement. *Ahlman v. Barnes*, 445 F. Supp. 3d 671, 684 (C.D. Cal. 2020). Plaintiffs do not  
11 need to provide a precise headcount, but they must offer “some evidence of or reasonably estimate the  
12 number of class members[.]” *Mirabelli v. Olson*, 350 F.R.D. 138, 144 (S.D. Cal. 2025). The key word is  
13 reasonable—this Court may connect dots that the evidence supports connecting, but it may not rely on  
14 mere speculation, impression, or extrapolation from cursory allegations. *Id.*

15 Plaintiffs fail to supply actual evidence of numerosity. Plaintiffs’ first and primary argument  
16 openly relies on speculation and extrapolation rejected by cases like *Mirabelli*. They assert, “On  
17 information and belief, at least ten hospitals in California, including LPCH, *could have* received a Grand  
18 Jury Subpoena.” Class Mot. 6 (emphasis added). Plaintiffs themselves have no way of knowing which  
19 hospitals, if any, received a grand jury subpoena even substantially similar to one the allegedly issued to  
20 LPCH. Nor do they have any way of knowing the contents of any such alleged subpoena(s). This is  
21 unsurprising, given the secrecy requirements of grand jury proceedings. Fed. R. Crim. P. 6(e). Plaintiffs  
22 then try to extrapolate their proposed class based on a news article’s claim that the number of patients’  
23 records sought in a *different* alleged subpoena to a *different* hospital with a *different* procedural posture  
24 numbered in the thousands. Class Mot. 6. Plaintiffs offer no reasonable method of translating such an  
25 unconfirmed statistic into an estimate of the number of individuals who could fall within their proposed  
26 class, let alone proposed subclass of LPCH patients, based on medical interventions received from  
27 specific hospitals.

28 Plaintiffs’ fallback argument—that joinder is impracticable because “transgender individuals face

1 heightened risks of harassment and discrimination,” *id.* at 7—lacks a basis in law. Indeed, they cite only  
2 one case for their assertion that “practical barriers to individual litigation—including the vulnerability of  
3 class members, limited ability to sue individually, and the sensitive nature of the claims—support  
4 numerosity.” *Id.* at 7 (citing *Rodriguez v. Hayes*, 591 F.3d 1105, 1123 (9th Cir. 2010)). As a preliminary  
5 matter, the cited portion of *Rodriguez* discusses commonality, not numerosity. But putting that aside,  
6 *Rodriguez*’s reasoning on this point is squarely limited to the immigration context. Indeed, in the same  
7 paragraph Plaintiffs cite, *Rodriguez* explained that absent class certification, the claims of many putative  
8 class members would have become procedurally moot, so certification was necessary to properly  
9 vindicate their rights. 591 F.3d at 1123. No such procedural hurdle exists here. Because their numerosity  
10 argument is purely speculative, Plaintiffs fail to affirmatively show numerosity for either their class or  
11 subclass.

12 **2. Commonality, typicality, and Rule 23(b)(2).** A single problem defeats Plaintiffs’ attempt to  
13 show commonality and typicality: Their proposed class sweeps in individuals who received gender-  
14 related medical interventions at *any* California hospital, but those individuals are not similarly situated  
15 with respect to Plaintiffs’ claims. Plaintiffs claim to be certain LPCH has received a grand jury subpoena,  
16 and they allege a belief that at least ten unnamed other hospitals in California have also received grand  
17 jury subpoenas. Class Mot. 6. If Plaintiffs were correct, that would mean they are trying to certify a class  
18 based on *different* government actions regarding *different* third-party actors (the hospitals), only some of  
19 whom are named as defendants in this action. Separate grand jury subpoenas may have different demands  
20 and may be issued to investigate different potential violations of the law, and each recipient of a grand  
21 jury subpoena may adopt a different strategy for engaging with the government upon receipt.

22 On Plaintiffs’ telling, prospective class members suffer injuries from different government  
23 actions—alleged grand jury subpoenas issued to different hospitals. That defeats commonality and  
24 typicality. Commonality requires a common answer to a common question among class members, “where  
25 the same evidence will suffice for each member to make a prima facie showing [or] the issue is susceptible  
26 to generalized, class-wide proof.” *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 453 (2016) (alteration  
27 in original) (quotation omitted); *accord Dukes*, 564 U.S. at 350 (for commonality purposes, class’s claims  
28 must “depend upon a common contention” which “must be of such a nature that it is capable of classwide

1 resolution”). In other words, commonality “requires the plaintiff to demonstrate that the class members  
2 ‘have suffered [or will soon suffer] the same injury[.]’” *Dukes*, 564 U.S. at 350. While it is true that a  
3 single common question will do, whether each class member “suffered a violation of the same provision  
4 of law” is not enough. *Dukes*, 564 U.S. at 350. Rather, “[c]ommonality requires the plaintiff[s] to  
5 demonstrate that the class members have suffered the same injury.” *Id.* (quotations omitted). Where, on  
6 Plaintiffs’ telling, prospective class members are injured by *different* government actions, which Plaintiffs  
7 have not come close to showing are materially identical, that defeats susceptibility of the questions to  
8 common proof or affirmative demonstration that common classwide answers are possible.

9 Plaintiffs’ supposed common question of fact can be broken down in the exact way *Dukes* warns  
10 against. Plaintiffs’ “Did the Department issue subpoenas? Did the subpoenas seek medical records? Are  
11 the subpoenas unconstitutional?” questions mirror the *Dukes* recitation of “Do all of us plaintiffs indeed  
12 work for Wal-Mart? Do our managers have discretion over pay? Is that an unlawful employment  
13 practice?” *Id.* This Court should hold, as did *Dukes*, that “[r]eciting these questions is not sufficient to  
14 obtain class certification.” *Id.*

15 The bottom line is that Plaintiffs fail to affirmatively demonstrate that they have presented any  
16 issue capable of classwide resolution in “one stroke[.]” *Dukes*, 564 U.S. at 350, because they seek to cram  
17 together claims arising from separate alleged subpoenas to separate medical institutions, without any  
18 affirmative showing that the same claims arise from the distinct alleged government actions. Plaintiffs  
19 assert that answers to the questions they articulate “are common even though class members’ medical  
20 histories are not identical.” Class Mot. 9. Not so. For one, even assuming a privacy interest sometimes  
21 allows a non-recipient to challenge a subpoena on the grounds that Plaintiffs raise, Plaintiffs fail to  
22 substantiate their argument that the entire class shares the same privacy interest in the requested records.  
23 *Cf. Doe v. Luzerne Cnty.*, 660 F.3d 169, 176 (3d Cir. 2011) (“Privacy claims under the Fourteenth  
24 Amendment necessarily require fact-intensive and context-specific analyses, and unfortunately, bright  
25 lines generally cannot be drawn.”). Plaintiffs also seek to define a class consisting of patients who were  
26 treated at several different hospitals, despite attaching an alleged subpoena allegedly served on just one  
27 hospital. As a result, Plaintiffs fail to convincingly argue that the Court can provide a “common answer[.]”  
28 throughout the class. *Dukes*, 564 U.S. at 350 (quotation omitted). Commonality is therefore lacking.

1 Typicality, which “tend[s] to merge” with commonality, *Dukes*, 564 U.S. at 349 n.5, exists when  
2 “each class member’s claim arises from the same course of events, and each class member makes similar  
3 legal arguments to prove the defendant’s liability.” *Rodriguez*, 591 F.3d at 1124 (cleaned up). But here,  
4 Plaintiffs are all aggrieved by the alleged subpoena to LPCH, while they seek to represent a class  
5 consisting of individuals who may be aggrieved by alleged subpoenas allegedly issued to other medical  
6 institutions—with no affirmative showing whatsoever that other alleged subpoenas have the same terms,  
7 could be vulnerable to the same claims, or even exist at all. That defeats typicality.

8 Certifying a class despite those differences is especially dangerous when it comes to a Rule  
9 23(b)(1)(A) or (b)(2) class, which binds all class members and prevents them from pursuing claims or  
10 seeking relief arising from the same factual nexus outside the class. If a no-opt-out class member needs  
11 additional relief of a different kind or could press additional claims based on his or her particular  
12 circumstances, that class member is still bound to the judgment, win or lose, and cannot pursue relief on  
13 his or her own. That is what a no-opt-out class means. Courts should not lightly place an absent class  
14 member in that position when there are signs of a lack of commonality or typicality.

15 Indeed, for essentially the same reasons, Rule 23(b)(1)(A) or (b)(2) treatment is not appropriate  
16 here. Under Rule 23(b)(2), Plaintiffs must show that Defendants have “acted or refused to act on grounds  
17 that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is  
18 appropriate respecting the class as a whole[.]” Fed. R. Civ. P. 23(b)(2). “The key to the (b)(2) class is  
19 ‘the indivisible nature of the injunctive or declaratory remedy warranted—the notion that the conduct is  
20 such that it can be enjoined or declared unlawful only as to all of the class members or as to none of  
21 them.’” *Dukes*, 564 U.S. at 360 (citation omitted). “In other words, Rule 23(b)(2) applies only when a  
22 single injunction or declaratory judgment would provide relief to each member of the class.” *Id.*

23 Again, because Plaintiffs claim certainty about exactly one alleged grand jury subpoena but seek  
24 to represent a class that includes individuals who received medical treatments at other hospitals, which  
25 Plaintiffs say may or may not have received similar or different subpoenas, that standard is not met here.  
26 The proposed class sweeps in patients of every “healthcare institution located in the State of California[.]”  
27 Class Mot. 5. Plaintiffs fall far short of affirmatively showing that every class member faces a certainly  
28 impending threat of disclosure—they themselves have no way of knowing the extent of compliance,

1 negotiation, or even contents of all the alleged subpoenas they seek to enjoin, at least against hospitals  
2 other than LPCH. The indivisible-remedy requirement of Rule 23(b)(2) is satisfied only when every class  
3 member is entitled to the requested relief. Where a significant portion of the class—here, patients of  
4 hospitals that have received no subpoena—could not independently seek the injunctions Plaintiffs  
5 request, that class fails the (b)(2) test. The proposed class sweeps in patients of every “healthcare  
6 institution located in the State of California.” Class Mot. 5. The alleged subpoena at issue was allegedly  
7 served on LPCH. Plaintiffs allege “on information and belief” that “at least ten hospitals in California,  
8 including LPCH, could have received a Grand Jury Subpoena.” *Id.* at 6.

9 The remedy Plaintiffs seek is readily divisible: Plaintiffs would get nothing from an order barring  
10 compliance with any subpoena issued to an institution other than LPCH, and patients of institutions other  
11 than LPCH would get nothing from an order barring compliance with any subpoena issued to LPCH. Nor  
12 have Plaintiffs begun to show that all alleged subpoenas and all prospective class members are sufficiently  
13 identical to permit common answers. That defeats commonality, typicality, and Rule 23(b)(2)  
14 certification.

15 **3. Adequacy.** Last, proceeding pseudonymously imperils Plaintiffs’ ability to serve as adequate  
16 class representatives. Courts are averse to pseudonymous plaintiffs acting as class representatives unless  
17 they “show that the disclosure of their identities in the complaint would cause specific, significant  
18 detrimental consequences based on their personal circumstances.” *I.L. v. Six Flags Ent. Corp.*, 2025 WL  
19 2300009, at \*3 (E.D. Cal. Aug. 8, 2025). Accordingly, courts have repeatedly expressed “concerns” about  
20 the prospect generally. *Rapuno v. Trs. of Dartmouth Coll.*, 334 F.R.D. 637, 649 (D.N.H. 2020); *see also*  
21 *J.R. v. Atrium Health, Inc.*, 2024 WL 3032890, at \*1 n.4 (W.D.N.C. June 17, 2024) (“[S]ome out-of-  
22 circuit courts have not permitted class representatives to proceed pseudonymously in litigation because  
23 it hampers the evaluation of the class representatives’ ability to represent the entire class.”).  
24 Pseudonymity makes it “unclear how [p]laintiffs [can] satisfy their burden to show adequacy when they  
25 are unknown or how they would evaluate potential conflicts with other class members.” *Doe (I) v. Univ.*  
26 *of Kan. Hosp. Auth.*, 2025 WL 1634958, at \*4 (D. Kan. June 9, 2025); *see Sherman v. Trinity Teen Sols.,*  
27 *Inc.*, 339 F.R.D. 203, 206 (D. Wyo. 2021) (“If Plaintiff proceeds under a pseudonym, it will be difficult  
28 to ascertain if Plaintiff and his counsel can fairly and adequately protect the interests of the class.”); *In re*

1 *Ashley Madison Customer Data Sec. Breach Litig.*, 2016 WL 1366616, at \*4-5 (E.D. Mo. Apr. 6, 2016)  
2 (plaintiffs could not proceed pseudonymously as class representatives because the class members and  
3 public had interest in knowing who was guiding and directing the litigation).

4 The Department does not oppose Plaintiffs’ wish to use pseudonyms to press their own claims;  
5 but Plaintiffs’ choice to proceed pseudonymously imperils the Court’s and the parties’ ability to  
6 determine whether they are adequate class representatives. To determine adequacy, the Court must  
7 consider whether there are “conflicts of interest between named parties and the class they seek to  
8 represent[,]” *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 594 (1997), and whether the named parties  
9 “possess the same interest and suffer the same injury as the class members,” *id.* at 625-26 (quotation  
10 omitted). Adequacy “also factors in competency and conflicts of class counsel.” *Id.* at 626 n.20. The  
11 Court cannot evaluate whether Plaintiffs are credible, conflict-free representatives of a class of allegedly  
12 hundreds without knowing who they are. Nor can it assess whether their litigation decisions are driven  
13 by genuine class interests or by an idiosyncratic personal circumstance that might not reflect the class as  
14 a whole. The Court has nothing more than Plaintiffs’ assertion that they “have no incentive to sacrifice  
15 the interests of absent class members because the relief they seek is the same relief the Class and LPCH  
16 Subclass need” and that they are not “subject to any unique defenses that threaten to become the focus of  
17 the litigation.” Class Mot. 12 (quotation omitted). That assertion cannot substitute for the showing Rule  
18 23 requires.

19 Even assuming anonymity does not prevent an adequacy finding, a conflict of interest exists  
20 between Plaintiffs and other members of the proposed class. The proposed class may encompass not only  
21 patients and families who oppose disclosure and who share the named representatives’ policy views, but  
22 also patients and families who hold contrary views—who may support enforcement of patient protection  
23 laws, who may have no objection to their records being produced, or who may actively prefer disclosure  
24 as a matter of personal conviction or legal strategy. A class representative who seeks to block an alleged  
25 investigation entirely cannot adequately represent a class member who does not. It follows that, without  
26 more, the Court cannot conclude that Plaintiffs “possess the same interest and suffer the same injury” as  
27 the proposed class members, *Amchem*, 521 U.S. at 594 (quotation omitted), and that the proposed class  
28 is conflict-free, *cf., e.g., Kim v. Allison*, 87 F.4th 994, 1000-01 (9th Cir. 2023) (conflict of interest when,

1 “by maximizing their own interests, the putative representatives ... would necessarily undercut the  
2 interests of another portion of the class”). Also, given that the “adequacy-of-representation requirement  
3 tends to merge with the commonality and typicality criteria of Rule 23(a),” the issues preventing findings  
4 of commonality and typicality—especially with respect to putative class members that could be affected  
5 by hypothetical subpoenas in the future—also demonstrate that “the named plaintiff’s claim and the class  
6 claims are [not] so interrelated,” and “that the interests of the class members will [not] be fairly and  
7 adequately protected in their absence.” *Amchem*, 521 U.S. at 626 n.20.

8 Plaintiffs’ response—asserting that “[t]heir interests are aligned with absent class members[,]”  
9 Class Mot. 12, by protecting their privacy regardless of their views on the merits—is circular. It assumes  
10 that every member of the proposed class shares the named representatives’ assessment that disclosure is  
11 harmful and that the alleged investigation is illegitimate. That assumption is not established, and under  
12 Rule 23, it cannot be assumed. This *ipse dixit*—especially when putative class members may well  
13 disagree with Plaintiffs’ evaluation of the Department’s investigation—does not suffice. *Cf. Dukes*, 564  
14 U.S. at 350 (“Rule 23 does not set forth a mere pleading standard.”).

### 15 **C. Certification is improper under Rule 23(b)(1)(A).**

16 Certification is proper under Rule 23(b)(1)(A) when prosecuting separate actions by individual  
17 class members would create a risk of “inconsistent or varying adjudications” that would establish  
18 “incompatible standards of conduct for the party opposing the class[.]” Fed. R. Civ. P. 23(b)(1)(A). This  
19 refers to the situation where “different results in separate actions would impair the opposing party’s ability  
20 to pursue a uniform continuing course of conduct.” *Zinser v. Accufix Rsch. Inst., Inc.*, 253 F.3d 1180,  
21 1193 (9th Cir.), *opinion amended on denial of reh’g*, 273 F.3d 1266 (9th Cir. 2001) (citation omitted).

22 Plaintiffs claim certification is proper pursuant to this rule because “DOJ is obliged by law to treat  
23 class members alike with respect to the constitutional question at issue” and “[i]f class members were  
24 required to proceed separately, different courts could impose inconsistent obligations on DOJ and  
25 subpoenaed providers.” Class Mot. 16. This contention fails for the same reasons as discussed above.  
26 Plaintiffs give this Court no legal reason to treat all members of the purported class the same. They  
27 speculate as to the number of alleged subpoenas that exist, have no way of knowing their contents to the  
28 extent that they even exist at all, and have no evidence regarding the extent to which each alleged

1 subpoena recipient maintains records or complies with the alleged subpoena. And Plaintiffs  
2 mischaracterize the circumstance Rule 23(b)(1)(A) seeks to avoid. Plaintiffs argue it would be improper  
3 for one court to enjoin the Department from obtaining the records of some patients while another court  
4 permits obtaining the records of others, and for courts to impose different limitations, retention policies,  
5 etc. Class Mot. 16. But such “administrative difficulty . . . required by different courts for differently  
6 situated potential claimants does not rise to the level of requiring of [the Department] *inconsistent* courses  
7 of conduct.” *Zinser*, 253 F.3d at 1195. This is why the Advisory Committee Notes refer to “actions to  
8 declare bond issues invalid, to fix the rights and duties of a riparian owner, and to determine a landowner’s  
9 rights and duties respecting a claimed nuisance.” *La Mar v. H & B Novelty & Loan Co.*, 489 F.2d 461,  
10 466 (9th Cir. 1973); Fed. R. Civ. P. 23(b)(1)(A) advisory committee’s note to 1966 amendment.  
11 Accordingly, the rule is in place not to ensure that all plaintiffs receive the same judgment, as Plaintiffs  
12 suggest, but to protect the non-movant from genuinely “incompatible” judgments that present practical  
13 impossibilities. Fed. R. Civ. P. 23(b)(1)(A). No such practical impossibility exists, where Hospital A  
14 could comply with Subpoena A even if a court bars compliance with Subpoena B by Hospital B, without  
15 creating any “incompatible standards of conduct” regarding medical records held by any institution  
16 regarding any putative class member. *Id.* If anything, Plaintiffs’ concern about the prospect of inconsistent  
17 rulings by different courts is good reason to conclude that challenges to any grand jury subpoenas belong  
18 in the issuing court—not a reason to certify a class in this Court in order to interfere with a different  
19 court’s alleged proceedings.

20 In sum, because members of the proposed class may justifiably be treated differently and Plaintiffs  
21 fail to show that the Department cannot practically manage different obligations regarding different  
22 patients or subpoenas, certification under Rule 23(b)(1)(A) is improper.

### **The Non-Merits Factors Disfavor Injunctive Relief**

24 Because Plaintiffs are unlikely to succeed on the merits, the Court should deny the motion and  
25 need not consider the remaining equitable factors. *See, e.g., Disney Enters., Inc. v. VidAngel, Inc.*, 869  
26 F.3d 848, 856 (9th Cir. 2017). In any event, these factors too strongly favor the government.

27 Initially, Plaintiffs have not shown that they are “likely to suffer irreparable harm in the absence  
28 of preliminary relief[.]” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Plaintiffs cannot

1 rely on a presumption that constitutional injuries are irreparable because Plaintiffs have not shown a likely  
2 violation of their constitutional rights, for the reasons explained above. Plaintiffs’ second theory—that  
3 disclosure of their personal information would irreparably harm their privacy interests—lacks factual and  
4 legal support. As to the former, Plaintiffs have been put on notice that “their identifying information could  
5 be revealed to the government in response to a subpoena or court order[.]” meaning that Plaintiffs “do  
6 not have a reasonable expectation of complete privacy” in records held by third-party providers. *In re*  
7 *Grand Jury Subpoena*, 875 F.3d at 1187; *see* Ex. A, LPCH NPP. And as for the latter, Plaintiffs cite no  
8 authority for the idea that providing their records to the federal government in response to an alleged  
9 grand jury subpoena would constitute irreparable harm. Grand jury proceedings are subject to strict  
10 secrecy requirements, Fed. R. Crim. P. 6—a tradition that is “older than our Nation itself.” *Pittsburgh*  
11 *Plate Glass Co. v. United States*, 360 U.S. 395, 399 (1959). And “the characteristic secrecy of grand jury  
12 proceedings is a further protection against” concerns about disclosure of personal information.  
13 *Branzburg*, 408 U.S. at 700. Moreover, documents obtained via grand jury subpoena “are entitled to the  
14 same rule of secrecy that governs the subpoena itself.” *Kalbers v. Dep’t of Just.*, 166 F.4th 783, 787 (9th  
15 Cir. 2026). Courts have relied on just this point to reject claims of irreparable harm. *See Trump v. Vance*,  
16 481 F. Supp. 3d 161, 164 (S.D.N.Y. 2020) (rejecting claim of irreparable harm “[b]ecause a grand jury  
17 is under a legal obligation to keep the confidentiality of its records”).

18         The balance of harms and public interest also do not favor Plaintiffs. *See Winter*, 555 U.S. at 20.  
19 The public and the government have a “compelling interest in finding, convicting, and punishing those  
20 who violate the law.” *Samia v. United States*, 599 U.S. 635, 655 (2023) (citation omitted); *Dole*, 950 F.2d  
21 at 1461 (“[T]here is little doubt that the Department’s purpose of investigating possible criminal  
22 violations of [a federal law] serves a compelling governmental interest.”). And there is a strong “public  
23 interest in law enforcement and in ensuring effective grand jury proceedings.” *Branzburg*, 408 U.S. at  
24 690; *In re Grand Jury Subpoena, No. 16-03-217*, 875 F.3d at 1191 (“The government clearly has a  
25 legitimate and compelling interest in the grand jury’s investigation into possible violations of federal  
26 law.”); *accord, e.g., In re Sealed Case*, 794 F.2d 749, 751 n.3 (D.C. Cir. 1986) (per curiam) (recognizing  
27 “the weighty public interest in the orderly functioning of grand juries and the judicial process”); *see also*  
28 *In re Subpoena Duces Tecum*, 228 F.3d 341, 349 (4th Cir. 2000) (interest in finding, convicting, and

1 punishing those who violate the law far “outweighs the privacy rights of those whose [medical] records”  
2 are sought via administrative subpoena). Plaintiffs’ contrary argument rests solely on the merits, TRO  
3 Mot. 24-25, and fails for the reasons already explained.

4 **CONCLUSION**

5 The Court should deny Plaintiffs’ motions for a temporary restraining order and for class  
6 certification. If the Court grants the motion for a temporary restraining order, the Department respectfully  
7 requests that the Court stay its order pending appeal, or at minimum for 10 days.

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Respectfully submitted,

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