IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

NEIL K. ANAND, Plaintiff, v. U.S. DEPARTMENT OF JUSTICE, OFFICE OF INFORMATION POLICY, Defendants.	)	Case No. 2:23-cv-02527-CFK

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff Neil Anand commences this action seeking declaratory relief and injunctive relief, in the form of preliminary and permanent injunctions, against the above-named Defendants, the United States ("U.S.") Office of Information Policy ("OIP"), United States Department of Justice ("USDOJ") and Office of the Solicitor General and alleges as follows:

Nature of Action

1. This action seeks declaratory and injunctive relief against U.S. Department of Justice, U.S. Executive Branch and/or its subsidiary agencies, OIP and Office of Solicitor General.

2. This is also an action under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, to compel the production of certain agency records related to Office of Information Policy (OIP), U.S. Department of Justice, 6th Floor 441 G St. NW Washington, DC 20530, and Office of the Solicitor General, U.S. Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530-0001.

3. The Founding Fathers of the U.S. created a trilateral form of government of checks and balances, where the primary function of the U.S. Judicial Branch is to balance the individual

citizens rights versus interests of the Federal government as well as "check" unlawful decisions made by the Congressional and Executive branches of the U.S. government.

4. The Judicial Branch interprets law and acts as an independent check on the Executive and Legislative branches under the Constitution's Separation of Powers. See *U.S. Army Corps of Eng'rs v. Hawkes Co., Inc*., 136 S. Ct. 1807 (2016) (judicial review of agency interpretation of Clean Water Act); *Sackett v. EPA*, 566 U.S. 120 (2012); *Rapanos v. United States*, 547 U.S. 715 (2006).

Legal Standards For Injunction

5. Federal Rule of Civil Procedure 65 provides that a court may issue a preliminary injunction only on notice to the adverse party.

6. Every order granting an injunction and every restraining order must: (A) state the reasons why it issued; (B) state its terms specifically; and (C) describe in reasonable detail—and not by referring to the complaint or other document—the act or acts restrained or required.

7. Persons Bound. The order binds only the following who receive actual notice of it by personal service or otherwise: (A) the parties; (B) the parties' officers, agents, servants, employees, and attorneys; and (C) other persons who are in active concert or participation with anyone described in Rule 65(d)(2)(A) or (B).

8. A federal district court may issue a nationwide, or "universal," injunction. see *Trump v. Hawaii*, U.S., 138 S. Ct. 2392, 2425 n.1 (2018) (Thomas, J., concurring) injunction "in appropriate circumstances." *Texas v. United States*, 809 F.3d 134, 188 (5th Cir. 2015), as revised (Nov. 25, 2015).

9. A nationwide injunction may be warranted where it is necessary to provide complete relief to the plaintiffs, to protect similarly situated nonparties, or to avoid the "chaos and

confusion" of a patchwork of injunctions. Id. at 916– 17 (citing Amanda Frost, In Defense of Nationwide Injunctions, 93 USCA11 Case: 21-14098 Date Filed: 12/06/2021 Page: 17 of 94 18 Opinion of the Court 21-14098 N.Y.U. L. Rev. 1065, 1101 (2018) (internal quotation marks omitted)).

10. Furthermore, universal relief may be justified where the plaintiffs are dispersed throughout the United States, or when certain types of unconstitutionalities are found. See *Int'l Refugee Assistance Project v. Trump*, 857 F.3d 554, 605 (4th Cir. 2017), as amended (June 15, 2017), *Trump v. Int'l Refugee Assistance,* U.S. ,138 S. Ct. 353 (2017).

11. Requests for preliminary injunctive relief are reviewed under the same standard as Motions to stay agency action. See *Cuomo v. U.S. Nuclear Regulatory Comm'n*, 772 F.2d 972, 974 (D.C. Cir. 1985); *Bauer v. DeVos*, 325 F. Supp. 3d 74, 105 (D.D.C. 2018).

12. The Court has discretion to grant a preliminary injunction if (1) Plaintiffs are "likely to succeed on the merits," (2) Plaintiffs are "likely to suffer irreparable harm in the absence of preliminary relief," (3) "the balance of equities tips in [Plaintiff's] favor," and (4) the provision of interim relief "is in the public interest." *Winter v. Natural Res. Def. Council, Inc*., 555 U.S. 7, 20 (2008); see *Sherley v. Sebelius*, 644 F.3d 388, 392 (D.C. Cir. 2011).

13. The District Courts assess preliminary injunction factors "on a sliding scale, whereby a strong showing on one factor could make up for a weaker showing on another." *NAACP v. Trump*, 321 F. Supp. 3d 143, 146 (D.D.C. 2018) (internal quotation marks omitted) (quoting *Cigar Ass'n of Am. v. FDA*, 317 F. Supp. 3d 555, 560 (D.D.C. 2018)); *Alabama Ass'n of Realtors v. United States Dept. of Health & Hum. Servs*., No. 20-CV-3377 (DLF), 2021 WL 1946376, at *1 (D.D.C. May 14, 2021) (under sliding scale approach, Plaintiff must show at least "a serious legal question on the merits"); see *Archdiocese of Wash. v. Washington Metro. Area Transit Auth*., 897 F.3d 314,

334 (D.C. Cir. 2018) (reserving question of "whether the 'sliding scale' approach remains valid after" *Winter*).

14. Whether a plaintiff has "established a likelihood of success on the merits" nonetheless remains the "most important factor." *Aamer v. Obama*, 742 F.3d 1023, 1038 (D.C. Cir. 2014); see *Electronic Priv. Info. Ctr. v. FTC*, 844 F. Supp. 2d 98, 101 (D.D.C. 2012) ("The likelihood of success requirement is the most important of [the preliminary injunction] factors."), aff'd, No. 12-5054, 2012 WL 1155661 (D.C. Cir. Mar. 5, 2012).

Jurisdiction and Venue

15. The Court has jurisdiction over this action under 28 U.S.C. § 1331 since this case arises under the Constitution and laws of the United States, as well as 42 U.S.C. § 1983 since Plaintiff Anand brings this suit to vindicate the deprivation of "rights, privileges, or immunities secured by the Constitution."
16. This Court also has jurisdiction under 28 U.S.C. §1343 and 28 U.S.C. § 2201(a).
17. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B).
18. The Court has the authority to grant the requested declaratory and injunctive relief under the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202.
19. Venue lies in this district pursuant to 5 U.S.C. § 552(a)(4)(B)
20. Venue is proper in this judicial district under 28 U.S.C. § 1391(e) because this is an action against agencies of the United States and at least one defendant resides in this district and only information (no real property) is involved in this action.
21. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) because at least one defendant resides in and performs their official duties in this District and a substantial part of the events or omissions giving rise to Plaintiff Anand's claims occurred in this District.

22. In the alternative, to the extent 28 U.S.C. § 1391(b)(2) is not applicable, venue is proper in accordance with 28 U.S.C. § 1391(b)(3).

Parties Involved In Request For Declaratory and Injunctive Relief

A) Plaintiff, Neil Anand, is a male American physician, of Indian race and nation of origin, person of color (brown skin), son of the State of Pennsylvania and son of the United States of America, who resides in Philadelphia, Pennsylvania, USA.

B) Defendant, Office of Information Policy ("OIP"), of the United States ("U.S.") is an executive department of the United States headquartered in Washington, D.C.

C) Defendant, United States Department of Justice ("USDOJ"), is an executive department headquartered in Washington, D.C. and "parent" agency of Office of Solicitor General.

Related Parties Involved In A Joint Enterprise With Defendant USDOJ

D) Department of Health and Human Services ("HHS") is an executive department headquartered in Washington, D.C. and "parent" agency of Center for Medicare and Medicaid Services ("CMS") and Center for Disease Control ("CDC").

E) Drug Enforcement Agency ("DEA") of the United States is an executive department of the U.S. Department of Justice ("USDOJ") and the United States headquartered in Washington, D.C.

F) Office of Inspector General ("OIG") of the United States is an executive department of the United States headquartered in Washington, D.C.

G) Federal Bureau of Investigation ("FBI") of the United States is an executive department of the United States headquartered in Washington, D.C.

H) Franchisor Blue Cross Blue Shield Association ("BCBSA")(informally known as the "Ku Klux Klan" of health insurance companies for coordinated utilization of the U.S. legal system

against numerous physicians of color in a "Jim Crow 2.0" process), through its franchisees and their subsidiaries, hold a dominant share of the U.S health insurance market. Blue Cross Blue Shield Association and its franchisees: provides health insurance, powers back office and front office operations for Medicare and Medicaid, shares investigative methods of physicians involved in the treatment of pain and addiction, targets physicians of color, coordinates investigations of health care fraud with law enforcement, effectively raises health insurance premiums simultaneously via monopoly power, and effectively fixes health entity and practitioner fee schedules via monopoly or monopsony power.

I) Independence Blue Cross ("IBC") and Amerihealth Caritas ("AC") are franchises of the BCBSA who are publicly advertising their actions in engineering medically racist policies to attack and incapacitate physicians of color (often by submitting false evidence to law enforcement entities in a "Jim Crow 2.0" process) and fuel a black overdose crisis as well as a worsening of the opioid epidemic and COVID pandemics, increasing overall U.S. citizen deaths over a multi-year period for the purposes of increased profits for their companies and increased compensation for its executive class employees.

J) Qlarant (formerly Health Integrity NBI Medic) is a federal contractor of U.S. Executive Branch Agency, Health and Human Services ("HHS"), that has previously testified in Federal Court, that it manipulates primary evidence to engineer and manufacture demonstrative evidence for criminal trials for United States Attorney Offices to speed, coordinate, and strengthen convictions against U.S. physicians and other healthcare professionals. Qlarant also assists in the convictions of physicians identified as "bad actors" by U.S. Attorney Offices and the Healthcare Fraud Preventive Partnership ("HFPP") in a "tell me the man and I will show you the crime" process.

K) General Dynamics Information Technology ("GDIT") Trusted Third Party ("TTP") is federal contractor of HHS that organizes and studies private, confidential, Personal Identifiable Information (PII) or electronic health data of U.S. citizens or patients for the Healthcare Fraud Preventive Partnership, also for the purposes of identification of criminal activity among physicians.

L) Healthcare Fraud Preventive Partnership ("HFPP") is a public-private partnership that operates as a healthcare payer cartel where the public HFPP entities, shield and permit the private HFPP entities to fix the prices of services via monopoly or monopsony power, offering only non-negotiable "take it or leave it" contracts of adhesion to small healthcare businesses, and to act as "rent seeking parasites", upon and at the expense of, U.S. health care providers and U.S. physicians that diagnose and treat human diseases. (Exhibit I)

M) The public-private "Joint Enterprise" consists of: USDOJ, BCBSA, IBC, AC, Qlarant, GDIT, HFPP, HHS, CMS, CDC, FBI and DEA.

CONCISE STATEMENT OF OPERATIVE FACTS & RELEVANT LAW

23. HFPP, GDIT, Qlarant, BCBSA, IBC, AC have intertwined themselves as "State Actors" with the USDOJ, DEA, HHS, OIG, CMS, CDC, Medicare, Medicaid, and the FBI for an improper purpose.

24. Although the United States passed a statute that specifically prohibits the Government from exercising any supervision or control over the practice of medicine or the manner in which medical services are provided pursuant to 42 U.S.C. § 1395, the public-private "Joint Enterprise": 1) seeks prospective criminal investigations; 2) seeks mutually beneficial pecuniary gains via asset forfeitures of health care providers, where the monetary amount in the restitutions bear no specific relation to actual damage and the monetary amounts sought under restitution represent an

unenforceable penalty under the Restatement (Second) of Contracts § 352 (1981) and are a violation of the U.S. 13th Constitutional Amendment; 3) have publicly advertised the private parties (of the "Joint Enterprise") entry into the traditional policing of criminal investigations; 4) have publicly advertised the private parties (of the "Joint Enterprise") entry into governmental prosecutorial functions by coordinating the criminal conviction of physicians; 5) have engineered a nationwide, Titanic "Tuskegee Experiment" causing the deprivation of medical care and treatment to people considered disabled and entitled at law to medical care under various laws; 6) are actively preventing Federal and State governments from mitigating human and financial losses that arises from controlled substance prescription drug diversion and/or health care calamities i.e. drug addiction epidemics or COVID worldwide pandemics; 7) failed to consider that 21 U.S.C. § 841(a) and 21 C.F.R. §1306.04 read together require that a physician issue a prescription "for a legitimate medical purpose in the course of his professional practice,"; 8) have introduced novel scientific evidence and criminal forensic tools without regard to the different standards of admissibility under *Frye* and *Daubert*; 9) failed to consider the curative disease based standard of care approach to treatment of traditional medicine, versus the non-curative, function optimizing standard of care model of chronic painful disease management or addiction medicine; 9) engaged in the permanent incapacitation of physicians through the National Practitioner Data Bank and OIG Medicare and Medicaid exclusion list.

25. The above parties (C-L) formed a public-private partnership as a "Joint Enterprise".

26. The "Joint Enterprise" created the peril by violating 42 U.S.C. § 1395 among other laws.

27. Members of the "Joint Enterprise" materially breached their provider contracts with physicians and other healthcare entities.

28. The “Joint Enterprise” members seek to fix prices and fee schedules for health care providers and physicians.

29. The “Joint Enterprise” partnership seeks to control conducts, protocols, and standards of medical care without regards to the elements of criminal statutes used for criminal indictments.

30. The “Joint Enterprise” has created computer databases ranking, categorizing or identifying the most likely drug seeking patients.

31. The “Joint Enterprise” has created computer databases ranking, categorizing or identifying deviating standards of medical care of physicians and other health providers.

32. The “Joint Enterprise” has created databases ranking, categorizing or identifying deviating standards of medical care of physicians without proving that a prescription lacked “a legitimate medical purpose.”

33. The “Joint Enterprise” members seek mutually beneficial pecuniary gains via asset forfeitures of health care providers, where the monetary amount in the restitutions bear no specific relation to actual damage and the monetary amounts sought under restitution represent an unenforceable penalty under the Restatement (Second) of Contracts § 352 (1981). See *United States v. Semrau*; *United States v. Banks*; *Ciminelli v. United States*

34. The “Joint Enterprise’s” seizure of property through criminal or civil asset forfeiture or restitution, exceeds the fair market value under the performance of the contract which are violations of the U.S. 13th Constitutional Amendment.

35. Plaintiff Anand is entitled to Declaratory and Injunctive Relief from Defendant USDOJ and its subsidiary agencies which are public members of the joint enterprise, as a remedy for the violations of law.

36. The “Joint Enterprise” mispresents proper and disparate medical standards of care.

37. The “Joint Enterprise” is involved as a manufacturer, and commercial supplier of a defective software products that fail to show that a violation of the “standard of care” renders a prescription or medical services “outside the usual course of professional practice.”

38. U.S. Physicians and U.S. patients are harmed from design defect of the defective software products produced and utilized by members of the “Joint Enterprise”.

39. Private members of the “Joint Enterprise” are strictly liable under a theory of product liability.

40. Private members of the “Joint Enterprise”, assumed the performance of traditional government functions, thus acting under the color of law, and becoming State Actors.

41. Judicial review under strict scrutiny standard is necessary due to the “Joint Enterprise’s” classification scheme based on a physician’s race, nation of origin, wealth, age, and business size in violation of fundamental rights under the 14th U.S. Const. Amend. Equal Protection Clause.

42. The “Joint Enterprise” facilitates unlawful search and seizure of medical records, Prescription Drug Monitoring Program (PDMP) data, and Personal Identifiable Information (PII) of U.S. citizens.

43. Judicial review under a strict scrutiny standard of review is warranted due to deliberate indifference to the clearly established law of the 4th U.S. Const. Amend.-Unreasonable search and seizure.

44. Actions by the “Joint Enterprise” restrain interstate commerce in a concerted manner through the fixing of prices, establishment and markings of territorial zones of insurer control, engagement in the defense of territorial insurer zones of control with agonistic behavior, enactment and institution of “perverted” medical diagnosis and treatment protocols.

45. The “Joint Enterprise’s” anticompetitive actions violate Sherman Clayton Anti-Trust Laws and are violations of the Federal Trade Commission Act.

46. The public members of the “Joint Enterprise” do not allow private negotiation of fees for goods or services provided to CMS Medicare and Medicaid to allow for free market forces, i.e. low prices or high quality, or ability for health providers to negotiate for services based upon a simple hourly rate.

47. The “Joint Enterprise’s” fixed prices restrains trade and reduces competition among health providers at the expense of higher health care premiums for CMS Medicare members and private health insurance company members.

48. The public and private healthcare insurance payers have a duty to allow healthcare providers to negotiate and differentiate their services based on price and quality for the benefit of health insurance company beneficiaries.

49. Plaintiff Anand has standing based on horizontal and vertical privity and third party beneficiary rights based on valid provider agreements and contracts with both public and private members of the “Joint Enterprise”.

50. Plaintiff Anand is entitled to compensatory damages and punitive damages from the private members of the “Joint Enterprise” as a remedy for the breach.

51. Plaintiff Anand has standing based on personal and property damage from strict liability arising out of a defective product.

52. United States Code 42 U.S.C. § 1983. Section 1983 provides an individual the right to sue *state* government employees and others acting "under color of state law" for civil rights violations. A “Bivens action” is the federal analog of 42 U.S.C. § 1983 which comes from *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

53. Pursuant to *Tumey v. Ohio*, 273 U.S 510 (1927), the "Joint Enterprise" is not entitled to pecuniary gains from prosecutions of doctors and other health professionals under the Controlled Substance Act.

54. "The Fifth Amendment provides that '[n]o person shall . . . be deprived of life, liberty, or property, without due process of law." *Johnson v. United States*, 576 U.S. 591, 595 (2015). Defendant USDOJ violates this guarantee by taking away someone's life, liberty, or property under a criminal law so vague that it fails to give ordinary people fair notice of the conduct it punishes, or so standardless it invites arbitrary enforcement." *Id*.; see also *Skilling v. United States*, 561 U.S. 358, 412 (2010)

55. The "Joint Enterprise's" judicial engineering of USAO "cookie cutter" prosecutions of physicians and other healthcare professionals violate the canons of lenity, the doctrine of constitutional avoidance, void-for-vagueness doctrine which are the underpinnings of criminal science and criminal law.

56. Federal courts apply the rule of lenity, a "time-honored interpretive guideline," when construing an ambiguous criminal statutes. *United States v. Kozminski*, 487 U.S. 931, 952 (1988).

57. The Supreme Court has explained: when a choice has to be made between two readings of what conduct Congress has made a crime, it is appropriate, before we choose the harsher alternative, to require that Congress should have spoken in language that is clear and definite. We should not derive criminal outlawry from some ambiguous implication. *United States v. Universal C.I.T. Credit Corp.*, 344 U.S. 218, 221–22 (1952).

58. The rule of lenity provides that when a criminal statute is susceptible to two different interpretations—one more and one less favorable to the defendant "leniency" requires that the court read it in the manner more favorable. *See Rewis v. United States*, 401 U.S. 808, 812, 91 S.Ct.

1056, 28 L.Ed.2d 493 (1971) ; *United States v. Ford*, 435 F.3d 204, 211 (2d Cir.2006) (explaining that "restraint must be exercised in determining the breadth of conduct prohibited by a federal criminal statute out of concerns regarding both the prerogatives of Congress and the need to give fair warning to those whose conduct is affected").

59. In simple terms, "lenity requires ambiguous criminal laws to be interpreted in favor of the defendants subjected to them." *United States v. Santos*, 553 U.S. 507, 514 (2008).

60. Lenity also protects the freedoms protected by the separation of powers: the legislature criminalizes conduct and sets statutory penalties, the executive prosecutes crimes, and the judiciary interprets the law's reach. *United States v. Bass*, 404 U.S. 336, 348 (1971). Lenity "strikes the appropriate balance between the legislature, the prosecutor, and the court in defining criminal liability." *Liparota*, 471 U.S. at 427.

61. The rule of lenity is a principle of statutory construction: it comes into play only if and when there is ambiguity. *United States v. Litchfield*, 986 F.2d 21, 22 (2d Cir.1993). It should not be viewed as a general principle requiring that clear statutes be applied in a lenient manner. *Callanan v. United States*, 364 U.S. 587, 596, 81 S.Ct. 321, 5 L.Ed.2d 312 (1961) (explaining that the rule of lenity, "as is true of any guide to statutory construction, only serves as an aid for resolving an ambiguity; it is not to be used to beget one").

62. "[R]equiring mens rea is in keeping with our longstanding recognition of the principle that ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity." *Liparota*, 471 U.S. at 427 (citation omitted).

63. The rule of lenity is a tool of construction "perhaps not much less old than construction itself." *United States v. Wiltberger*, 18 U.S. (1 Wheat.) 76, 95 (1820).

64. Three "core values of the Republic" underlie the rule of lenity: (1) due process; (2) the separation of governmental powers; and (3) "our nation's strong preference for liberty." *United States v. Nasir*, 17 F.4th 459, 473 (3d Cir. 2021) (en banc) (Bibas, J., concurring).

65. Lenity "embodies 'the instinctive distaste against men languishing in prison unless the lawmaker has clearly said they should.'" *Nasir*, 17 F.4th at 472 (Bibas, J., concurring) (quoting *Bass*, 404 U.S. at 347). By promoting liberty, lenity "fits with one of the core purposes of our Constitution, to 'secure the Blessings of Liberty' for all[.]" Id. (quoting U.S. Const. pmbl.).

66. Any "ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity." *Liparota*, 471 U.S. at 427 (quoting *Rewis v. United States*, 401 U.S. 808, 812 (1971)).

67. Due process requires that "a fair warning should be given to the world in language that the common world will understand, of what the law intends to do if a certain line is passed. To make the warning fair, so far as possible the line should be clear." *McBoyle v. United States*, 283 U.S. 25, 27 (1931). By construing ambiguities in the defendant's favor, lenity prohibits criminal consequences when Congress did not provide a fair warning through clear statutory language. *Id*.

68. "The doctrine of constitutional avoidance provides that when a "statute is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise and by the other of which such questions are avoided, [a court's] duty is to accept the latter*." United States ex rel. Attorney General v. Del. & Hudson Co*., 213 U.S. 366, 408, 29 S.Ct. 527, 53 L.Ed. 836 (1909) ; see also *Jones v. United States,* 526 U.S. 227, 239–40, 119 S.Ct. 1215, 143 L.Ed.2d 311 (1999) ; *Triestman v. United States*,124 F.3d 361, 377 (2d Cir.1997).

69. The canon of constitutional avoidance instructs that a court must "construe [a] statute to avoid [serious constitutional] problems unless such construction is plainly contrary to the intent of Congress." *Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Constr. Trades Council*, 485

U.S. 568, 575 (1988). Furthermore, this rule of construction prevails even concerning an ambiguous statute or regulation over which an agency ordinarily would be entitled to interpretive deference. *Id*. at 574–75.

70. The void-for-vagueness doctrine addresses concerns regarding (1) fair notice and (2) arbitrary and discriminatory prosecutions. *Skilling*, 561 U.S. at 412, 130 S.Ct. 2896 (citation omitted). To avoid a vagueness challenge, a statute must define a criminal offense in a manner that ordinary people must understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement. *Id.* at 402–03, 130 S.Ct. 2896. The question, in short, is whether an ordinary person would know that engaging in the challenged conduct could give rise to the type of criminal liability charged. *City of Chicago v. Morales*, 527 U.S. 41, 56 (1999)

71. As the Supreme Court has recognized, however, "due process requirements are not designed to convert into a constitutional dilemma the practical difficulties in drawing criminal statutes both general enough to take into account a variety of human conduct and sufficiently specific to provide fair warning that certain kinds of conduct are prohibited." *United States v. Lanier*, 520 U.S. 259, 271, 117 S.Ct. 1219, 137 L.Ed.2d 432 (1997)

72. "[A] mistake of law is a defense if the mistake negates the 'knowledge . . . required to establish a material element of the offense[.]'" *Rehaif,* 139 S. Ct. at 2198 (quoting Model Penal Code § 2.04, at 27)

73. Defendant U.S. Department of Justice, and its subsidiary agencies, are administrative agencies, that are engaged with the "Joint Enterprise" in establishing interpretation of federal criminal offenses (fraud, etc.) of health care and the Controlled Substance Act, thereby allowing a

prosecutorial agency to define a criminal offense, and create criminal liability without an element of the defendant's knowledge of wrongdoing.

74. Considering the "traditional tools of statutory construction," including "the provision's text, context, legislative history, and purpose," *American Fuel & Petrochemical Mfrs. v. EPA,* 3 F.4th 373, 380 (D.C. Cir. 2021); that constitutional requirement means that statutory text permits only one outcome—reading the statute to prohibit only knowing departures from acceptable standards of medical practice which means USDOJ enforcement of regulations as interpreted by the "Joint Enterprise" cannot supplant statutory text and due process.

75. "A statutorily mandated factor, by definition, is an important aspect of any issue" under consideration. *United Parcel Serv*., 955F.3d at 1050-51. An agency is therefore not "free to ignore any [such] factor entirely," or to instruct another entity to do so. *Carlson v. Postal Regul. Comm'n*, 938 F.3d 337, 344 (D.C. Cir. 2019).

76. Defendant USDOJ and the "Joint Enterprise" created criminal liability where there was none before, by eliminating any requirement that a physician or healthcare professional be aware that his conduct departs from professional practice.

77. Congress did not delegate such lawmaking authority to U.S. Executive Branch Defendant, USDOJ, because Due process requires more notice to a criminal defendant before they can be imprisoned for decades for the purpose of civil or criminal asset forfeitures.

78. "It is axiomatic that an administrative agency's power to promulgate legislative regulations is limited to the authority delegated by Congress." *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988).

79. Nor can an agency alter a statutorily imposed burden of proof, as the Defendant USDOJ and their "Joint Enterprise" accomplishes here. See *Public Service Co. of Indiana, Inc.,* 749 F.2d at 765-66.

80. If "Congress has directly spoken to the precise question at issue," "that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress." *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 842–43 (1984).

81. The "Joint Enterprise" Members, HFPP, GDIT, Qlarant, BCBSA, IBC, AC have intertwined themselves as State Actors with the DEA, HHS, OIG, CMS, CDC, Medicare, Medicaid, and the FBI to endow the nation's chief prosecutor at the USDOJ with the power to write his/her own criminal codes, as determined by the machinations of the members of the "Joint Enterprise", to subvert the design of the Founding Fathers of the Constitution, which "promises that only the people's elected representatives may adopt new federal laws restricting liberty." 139 S. Ct. at 2131.

82. "A conviction fails to comport with due process if the statute under which it is obtained fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement*." Holder v. Humanitarian Law Project*, 561 U.S. 1, 18 (2010).

83. "[A] regulation is not vague because it may at times be difficult to prove an incriminating fact but rather because it is unclear as to what fact must be proved." *F.C.C. v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012) (holding that television stations did not have fair notice that "fleeting expletives" constituted a violation). This can arise, for example, from "statutes that tie[ ] criminal culpability to . . . wholly subjective judgments without statutory definitions,

narrowing context, or settled legal meanings." *United States v. Williams*, 553 U.S. 285, 306 (2008).

84. Whether a criminal statute is impermissibly vague is a question of law for the court that "must be made on the basis of the statute itself and the other pertinent law, rather than on the basis of an ad hoc appraisal of the subjective expectations of particular defendants." *Bouie v. City of Columbia*, 378 U.S. 347, 355 n.5 (1964).

85. The analysis of whether fair notice has been provided "should be conducted bearing in mind the context in which the statute is applied." *United States v. Beason*, 523 Fed. Appx. 932, 934 (4th Cir. 2013) (reversing a conviction because an inmate did not have fair notice that possession of a cell phone in a federal prison constituted a federal criminal offense, even though the inmate knew he could be subject to administrative sanctions for possessing it).

86. U.S. physicians and healthcare professionals also lack sufficient notice of when alleged medical malpractice could subject them to criminal prosecution.

87. In the context of the practice of medicine, the U.S. Supreme Court has criticized, on vagueness grounds, statutes that do "not afford broad discretion to the physician" but instead attempt to "condition[] potential criminal liability on confusing and ambiguous criteria" and "therefore present[] serious problems of notice, discriminatory application, and chilling effect on the exercise of constitutional rights." *Colautti v. Franklin*, 439 U.S. 379, 394 (1979).

88. There is no guarantee that the "Joint Enterprise" who investigates a medical professional based on allegations of medically unnecessary treatments will refer a physician for prosecution in the same way.

89. The lack of notice is further exacerbated by USDOJ's and the "Joint Enterprise's" dependence on medical standards that are constantly changing and often equivocal. See *Fox*

Television Stations, 567 U.S. 239 at 253-54 (concluding there was a due process violation and holding that there was no fair notice when the government "changed course" in its interpretation of its own guidelines); cf. *Levin*, 973 F.2d at 469 (affirming dismissal of health care fraud indictment pretrial where the government had issued numerous opinion letters that appeared to approve the practices set forth in the indictment and reflected the ambiguity of the statute).

90. USDOJ in partnership with the public-private "Joint Enterprise", sanctions the most indefensible sort of entrapment by the State — convicting a citizen for exercising a privilege which the State clearly had told him was available to him. Cf. *Sorrells v. United States*, 287 U.S. 435, 442, 53 S.Ct. 210, 212, 77 L.Ed. 413.

91. A state may not issue commands to its citizens, under criminal sanctions, in language so vague and undefined as to afford no fair warning of what conduct might transgress them. *Lanzetta v. State of New Jersey*, 306 U.S. 451, 59 S.Ct. 618, 83 L.Ed. 888.

92. Inexplicably contradictory commands in healthcare statutes ordaining criminal penalties have, in the same fashion, judicially been denied the force of criminal sanctions. *United States v. Cardif* , 344 U.S. 174, 73 S.Ct. 189, 97 L.Ed. 200. See also *United States v. Clark*, 546 F.2d 1130, 1135 (5th Cir. 1977) (where court reiterated the principles set forth in *Raley* and *United States v. Laub*, 385 U.S. 475, 87 S.Ct. 574, 17 L.Ed.2d 526 (1967) that the government may not actively mislead individuals by authoritative assurances that certain activity is legal and thereafter initiate a prosecution for engaging in the sanctioned activity); *United States v. Mann*, 517 F.2d 259, 270 (5th Cir. 1975); *United States v. Lansing*, 424 F.2d 225, 226 (9th Cir. 1970).

93. The Supreme Court reaffirmed its pronouncements in *Raley v. State of Ohio*, in *United States v. Laub*, 385 U.S. 475, 87 S.Ct. 574, 17 L.Ed.2d 526 (1967), where it stated: Ordinarily,

citizens may not be punished for actions undertaken in good faith reliance upon authoritative assurance that punishment will not attach.

94. The Supreme Court stated in *Raley v. State of Ohio,* 360 U.S. 423, 438, 79 S.Ct. 1257, 1266, 3 L.Ed.2d 1344, we may not convict " a citizen for exercising a privilege which the State clearly had told him was available to him."

95. As *Raley* emphasized, criminal sanctions are not supportable if they are to be imposed under "vague and undefined" commands (citing *Lanzetta v. State of New Jersey*, 306 U.S. 451, 59 S.Ct. 618, 83 L.Ed. 888 (1939)); or if they are "inexplicably contradictory" (citing *United States v. Cardif* , 344 U.S. 174, 73 S.Ct. 189, 98 L.Ed. 200 (1952); and certainly not if the Government's conduct constitutes " active misleading".

96. USDOJ and the “Joint Enterprise” data analytics, computer programs, mathematical algorithms, and civil/criminal asset forfeiture schemes are a significant and severe violation of the Constitutional rights of US citizens because the use of computer algorithms in the classification of human beings by analyzing financial and property records for the sole purpose of confiscating private property violates United States Constitutional Law as well as International Law.

97. Under *Withrow v. Larkin*, 421 U.S. 35 (1075): combined investigative prosecutorial function and decision making process is no structural bias, unless there is pecuniary gain, under *Gibson v. Berryhill*, 411 U.S. 564 (1073)(where a state optometrist board violated due process due to its structural bias, the board was full of practicing optometrists whose earnings might decrease if there were more competing optometrists).

98. The “Joint Enterprise” and HFPP public-private partnership primarily functions as a cartel and seeks for purposes of pecuniary and proprietary gains, civil and criminal asset forfeitures

from “suspect class (race and religious)”, minority physicians and healthcare professionals, who subsequent to asset “stripping”, are concentrated within American prison camps.

99. The U.S Executive Branch, USDOJ, and “Joint Enterprise” asset confiscation schemes upon U.S. physicians and health professionals nationwide, are analogous to the historical asset confiscation of Native-Indian Land and concentration of Native Americans upon American reservations, or historical asset confiscation of Japanese Americans and concentration of Japanese Americans within American internment camps.

100. The Blue Cross Blue Shield (“BCBS”) franchisees, in their conduct as agents and “Champion Partners” of the Government within the “Joint Enterprise”, are subject to Constitutional law, such as 14th Amendment Equal Protection Clause.

101. BCBS documents explain that BCBS Corporate Financial Investigations Department (“CFID”) employees consist of former federal, state and local law enforcement agents and lawyers who improperly communicate with current State and Federal law enforcement agents to initiate criminal proceedings against BCBS business competitors or unfavored healthcare professionals, violating impartiality regulation, 28 C.F.R. § 45.2. Such behavior also occurs in violation of 5 C.F.R. § 2635.501 – 503 (Subpart E – Impartiality in Performing Official Duties).

102. 28 C.F.R. § 45.2 and 5 C.F.R. § 2635.501 – 503 prohibits a BCBS CFID employee, without written authorization, from participating in a criminal investigation or prosecution if he or she has a personal or political relationship with any person or organization substantially involved in the conduct that is the subject of the investigation or prosecution, or any person or organization which he or she knows has a specific and substantial interest that would be directly affected by the outcome of the investigation or prosecution.

103. The “Joint Enterprise” seeks to expand the power of its U.S. Executive Branch partner agencies beyond enforcement of the law to invade and infringe upon the jurisdiction of the Congressional and Judicial Branches in violation of the U.S. Constitution and Separation of Powers Acts. The “Joint Enterprise” seeks and schemes to usurp Congressional power to make law and seeks and schemes to usurp Judicial power to interpret law.

104. Immediate and irreparable injury, loss, or damage will result to Plaintiff Anand, U.S. Physicians as well as the general population of United States Citizens absent judicial intervention by the EASTERN DISTRICT COURT OF PENNSYLVANIA and its senate confirmed, principal officers.

Plaintiff Anand’s Freedom of Information Request

105. The Freedom of Information Act (FOIA) requires federal agencies to disclose such public information upon a citizen's request unless the information falls within exemptions from disclosure identified in 5 U.S.C. § 552(b). 5 U.S.C. § 552(a)(1), (2) and (3); *Oregon Natural Desert Association v. Locke*, 572 F.3d 610, 614 (9th Cir. 2009). Where an agency refuses to produce requested information, FOIA permits an aggrieved party to file a civil action in federal district court requesting the court order the agency to produce the information. 5 U.S.C. 552(a)(4)(B).

106. Plaintiff Anand made formal requests under the Freedom of Information Act (“FOIA”) 5 U.S.C. § 552 to USDOJ and OIP (Exhibit II & Exhibit III). The legal basis for Plaintiff FOIA requests includes the following legal authorities: *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979). *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223–24 (D.C. Cir. 1987). *Mead Data Central, Inc. v. U.S. Dep’t of the Air Force*, 566 F.2d 242, 251 (D.C. Cir. 1977).

107. Plaintiff Anand pursued actions under the Freedom of Information Act (“FOIA"), 5 U.S.C. § 552, to compel the production of certain U.S. executive branch agency records related to

HHS/ CMS Medicare, Qlarant, Blue Cross Blue Shield Association (BCBSA) and its member franchises, Office of Inspector General (OIG), and Drug Enforcement Agency (DEA).

108. From November 22, 2021, ongoing Plaintiff filed FOIA requests and/or appeals with the following:

A. FOIA Public Liaison, Georgianna Gilbeaux, Valeree Villanueva, Office of Information Policy, United States Department of Justice Sixth Floor, 441 G Street, NW, Washington, DC 20530-0001, Telephone 202-514-3642

B. Douglas R. Hibbard, Chief, Office of Information Policy (OIP), United States Department of Justice, Sixth Floor, 441 G Street, NW, Washington, DC 20530-0001, Telephone at 202-514-3642

C. OIP FOIA STAR portal https://www.justice.gov/oip/submit-and-track-request-or-appeal

A. Office of Government Information Services (OGIS) National Archives and Records Administration 8601 Adelphi Road-OGIS College Park, MD 20740-6001 Telephone: 202-741-5770 Toll-Free: 1-877-684-6448 E-mail: ogis@nara.gov Fax: 202-741-5769

B. FOIA/PA Mail Referral Unit, Department of Justice Room 115, LOC Building, Washington, DC 20530-0001, Phone: (202) 616-3837, E-mail: MRUFOIA.Requests@usdoj.gov

C. Office of Information Policy (OIP), U.S. Department of Justice, 6th Floor 441 G St. NW Washington, DC 20530, E-mail: DOJ.OIP.FOIA@usdoj.gov

109. On November 22, 2021, Plaintiff Anand submitted Freedom of Information Act (FOIA) request FOIA-2022-00404 Tracking Number, EMRUFOIA112121, concerning information that includes but is not limited to data analytics algorithms used in the Healthcare Fraud Preventive

Partnership (HFPP), Blue Cross Blue Shield Association (BCBSA), General Dynamics Information Technology (GDIT) Trusted Third Party (TTP), Qlarant NBI Medic, Medicare Pill Mill Doctor Project or US Attorney's Office (USAO)/U.S. Department of Justice (USDOJ); etc. (Exhibit II)

110. On March 8, 2022, Plaintiff Anand submitted Freedom of Information Act (FOIA) request FOIA-2022-00877 to U.S. Department of Justice Office of Information Policy, in which he requested various records possessed by USDOJ and Office of Solicitor General concerning *Ruan v. United States*, No. 20-1410 and the opioid crisis. (Exhibit III)

111. Plaintiff Anand is the requester of the withheld records by Defendant, U.S. Office Of Information Policy ("OIP"), and U.S. Department of Justice ("USDOJ") which are bureaus of the United States Executive Branch.

112. USDOJ and OIP are agencies of the federal government within the meaning of 5 U.S.C. § 552(f) and has possession and control of the records that Plaintiff seeks.

113. By written letter and electronic FOIA fillings, dated November 22, 2021 (Exhibit II) and March 8, 2022 (Exhibit III), addressed to Defendants, Plaintiff requested copies of records, preferably in electronic format, along with any associated documentation.

114. Plaintiff Anand is a physician at risk of "loss of substantial due process rights." See 5 U.S.C. § 16.5(e)(1)(ii) (2021) with significant interest in Medicare, HFPP, Blue Cross Blue Shield Association, Independence Blue Cross, among other Blue Cross Blue Shield Franchisees, Qlarant Corporation, waste fraud and abuse computer algorithms, outlier mathematics and computer algorithms, billing computer algorithms, and controlled substance medications computer algorithms.

115. Plaintiff seeks among other documents, all data analytics algorithms used in Pill Mill Doctor Project, Waste Fraud and Abuse, Medicare Opiate Risk Tool "Pill Mill Risk Analysis" software and other Health Care Fraud Prevention and Enforcement Action Team (HEAT) initiatives, seeking copies of all information concerning data analytics algorithms used in the Pill Mill Doctor Project; all reports and work products generated by contractor Qlarant Corporation concerning the Pill Mill Doctor Project; statement of work and official contract of Qlarant Corporation; all reports or referral of physicians from Blue Cross Blue Shield Association and its member franchises to OIG, USDOJ, FBI, or DEA for criminal or civil proceedings.

116. Plaintiff seeks Government documents of Qlarant, National Benefit Integrity Medicare Drug Integrity Contractor (NBI MEDIC), proactive data analysis to identify potential fraud, waste and abuse involving controlled substances. Data analyses includes: identifying trends, anomalies, and questionable physician and pharmacy practices involving prescription opioids in order to identify outliers, and recover improper payments, as well as make referrals to law enforcement including Quarterly Pharmacy Risk Assessment, which categorizes pharmacies as high, medium, or low risk; Prescriber Risk Assessment, which provides a peer comparison of Schedule II controlled substances; "Trio Prescriber" initiative, which identifies providers who prescribe beneficiaries a combination of an opioid, benzodiazepine, and the muscle relaxant carisoprodol; and Identified improper payments for drugs inappropriately covered under the Part D program without a prior authorization; for example, Transmucosal Immediate Release Fentanyl (TIRF).

117. Plaintiff seeks documents from Defendants for general public release including, physician and patient advocates, who are working to promote the rule of law in the United States while preventing the overreach of the executive branch of the U.S. government.

118. Plaintiff Anand's aim is to ensure due process and equal protection for all U.S. physicians and the patients they take care of.

119. Plaintiff is also currently working with academics in the fields of medicine, law, pharmacy, and the media, who are also engaged in encouraging public knowledge and promoting law and individual rights guaranteed under the United States Constitution and the laws of the United States.

120. Plaintiff's mission includes promoting government transparency and accountability by gathering official information, analyzing it, and disseminating it through reports, press releases, and/or other media, including social media platforms, all to educate the public.

121. All the records that will eventually be produced by Plaintiff Anand's FOIA requests will be made publicly available on the internet for citizens, journalists, and scholars to review and use.

122. Justice Thurgood Marshal wrote, "[t]he basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed." *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978).

123. Agencies must make determinations concerning federal investigation exemptions according to a good-faith, "reason to believe" standard.

124. Furthermore, U.S. Federal Courts and Attorney General's Memorandum have stated to U.S. Citizens seeking information from Federal Agencies pursuant to Freedom of Information Act, "Obviously, where all investigatory subjects are already aware of an investigation's pendency, the "tip off" harm sought to be prevented through this record exclusion is not of concern. Accordingly, the language of this exclusion expressly obliges agencies contemplating its use to consider the level of awareness already possessed by the investigative subjects involved." See *Attorney*

General's Memorandum on the 1986 Amendments to the Freedom of Information Act 18-22 (Dec. 1987); (cited in *Tanks*, 1996 WL 293531, at *5); see also *Steinberg v. United States Dep't of Justice*, No. 93-2409, 1997 WL 349997, at *1 (D.D.C. June 18, 1997)

125. Once a law enforcement matter reaches a stage at which all subjects are aware of its pendency, or at which the agency otherwise determines that the public disclosure of that pendency no longer could lead to harm, the exclusion should be regarded as no longer applicable.

126. If the FOIA request that triggered the agency's use of the exclusion remains pending administratively at such time, the excluded records should be identified as responsive to that request and then processed in an ordinary fashion.

127. Plaintiff is seeking vital information concerning USDOJ/DEA and Health and Human Services/OIG “Pill Mill Doctor Project” as well as associated documents needed to determine whether the USDOJ is willfully and knowingly “targeting” patients who are suffering from pain or addiction and the physicians who treat such diseases.

128. Plaintiff is also seeking information including but not limited to whether the USDOJ/DEA and HHS/CMS/OIG is prosecuting individual practitioners as compared to large practices, small pharmacies as compared to large pharmacy chains, older physicians as compared to younger physicians, and physicians of color in comparison to physicians with white skin.

129. For the purposes of expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E)(vi) and 28 C.F.R. § 16.5(e), Plaintiff is seeking all information on how the Healthcare Fraud Prevention Partnership (HFPP), CMS Medicare’s Trusted Third Party (TTP), General Dynamics Information Technology (GDIT), CMS Contractor NBI Medic Qlarant, Blue Cross Blue Shield Association, and Independence Blue Cross communicates and shares healthcare information or patient data of U.S. citizens with federal law enforcement departments including but not limited to the United

States Department of Justice, Drug Enforcement Agency (DEA), Federal Bureau of Investigation (FBI) and Office of Inspector General (OIG).

130. Plaintiff's request also covered any material of the types called for herein that come into existence between the date of his requests and the date of Defendants' final response.

131. For the purposes of 5 U.S.C. § 552(a)(6)(E)(vi) and 28 C.F.R. § 16.5(e), Plaintiff instantly certified that Plaintiff had a compelling need for expedited processing of its requests by USDOJ/OIP/Office of Solicitor General or their collaborators Qlarant NBI Medic, Healthcare Fraud Preventive Partnership, General Dynamics Information Technology Trusted Third Party, Blue Cross Blue Shield Association on a rolling basis (Exhibits II & III).

132. Plaintiff requested that Defendants provide information with minimal redactions, as excessive redactions are disfavored as the FOIA's exemptions are exclusive and must be narrowly construed.

133. If a record contains information responsive to a FOIA request, then the Defendants must disclose the entire record; a single record cannot be split into responsive and non-responsive bits. Consequently, the department should produce email attachments Per 5 U.S.C. § 552(a)(4)(A)(iii) and 28 C.F.R. § 16.10.

134. Plaintiff also requested a waiver of all search and duplication fees.

135. Plaintiff is aware that commercial or financial matters are only "confidential" for the purpose of exemption if such voluntarily provided information is of a kind that would customarily not be released to the public by the person from whom the information was obtained, or if such required submissions are likely to: impair the government's ability to obtain necessary information in the future; cause substantial harm to the competitive position of the person from whom the information was obtained; or impair the effectiveness of a government program.

136. Plaintiff's FOIA requests are not subject to any confidentiality exemption as his request is intended to protect the interest of both the government and submitters of information. Therefore there is no relevant objection that would satisfy Exemption b(7) which protects "records or information compiled for law enforcement purposes ... to the extent that the production of such law enforcement records or information (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, (F) could reasonably be expected to endanger the life or physical safety of any individual."

137. Plaintiff Anand, U.S. physicians and the general public are interested in researching, analyzing, and verifying the utilization of computerized data analytic, algorithms by Defendants or its contractors, as criminal forensic tools. Therefore, it is important that there is disclosure to the public pertaining to the verification, reliability and credibility of these novel, criminal forensic, data analytic, mathematical, computer algorithmic tools utilized by Defendants or its contractors.

138. Pursuant to Freedom of Information Act (FOIA), 5 U.S.C. § 552, and 28 C.F.R. Part 16. Plaintiff is seeking all responsive records regardless of format, medium, or physical characteristics.

139. In conducting Defendants search, Plaintiff requested that the terms "record," "document," and "information" in their broadest sense, include any written, typed, recorded, graphic, printed, or audio material of any kind.

140. Plaintiff is seeking records of any kind, including electronic records, audiotapes, videotapes, and photographs, as well as letters, emails, facsimiles, telephone messages, voice mail messages and transcripts, notes, or minutes of any meetings, telephone conversations or discussions.

141. Plaintiff's FOIA request included any attachments to these records. No category of material should be omitted from search, collection, and production.

142. Defendants are required to search all records regarding agency business.

143. Defendants cannot exclude searches of files or emails in the personal custody of agency officials, such as personal email accounts. Records of official business conducted using unofficial systems or stored outside of official files is subject to the Federal Records Act and FOIA.

144. It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time. Plaintiff Anand has a right to records contained in those files even if material has not yet been moved to official systems or if officials have, through negligence or willfulness, failed to meet their obligations.

145. In conducting a "reasonable search" as required by law, Defendants must employ the most up-to-date technologies and tools available, in addition to searches by individual custodians likely to have responsive information.

146. Under the FOIA Improvement Act of 2016, agencies must adopt a presumption of disclosure, withholding information "only if . . . disclosure would harm an interest protected by an exemption" or "disclosure is prohibited by law."

147. If it was Defendants position that any portion of the requested records is exempt from disclosure, Plaintiff requested that Defendants provide an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974).

148. A *Vaughn* index must describe each document claimed as exempt with sufficient specificity "to permit a reasoned judgment as to whether the material is actually exempt under FOIA."

149. Moreover, the *Vaughn* index "must describe each document or portion thereof withheld, and for each withholding it must discuss the consequences of disclosing the sought-after information." Further, "the withholding agency must supply 'a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply."

150. Defendants are required to disclose any reasonably segregable non-exempt portions of the requested records.

151. Claims that are non-segregable must be made with the same degree of detail as required for claims of exemptions in a *Vaughn* index.

152. When a request is denied in whole, Defendants should state specifically that it is not reasonable to segregate portions of the record for release.

153. Defendants should institute a preservation hold on information responsive to this request.

154. Any possibility of U.S. Constitutional Law Violations, U.S. Statutory Law Violations, International Law Violations, Human Rights Violations, and Crimes Against Humanity, compels the need for expedited processing of Plaintiff Anand's FOIA requests by Defendants pursuant to 5 U.S.C. § 552(a)(6)(E)(vi) and 28 C.F.R. § 16.5(e).

155. Plaintiff in administrative appeals submitted on March 30, 2022, to Defendants certified the "compelling need" for expedited processing of Defendants FOIA requests under 5 U.S.C. § 552(a)(6)(E).

156. The common public meaning of "urgency" at the time of 5 U.S.C. § 552(a)(6)(E)(v)(II)'s enactment was "the quality or state of being urgent." The common public meaning of "urgent", in turn, was "requiring or compelling speedy action or attention."

157. As permitted by statute, the department agencies have expanded expedited processing to include requests for records involving the loss of substantial due process rights or matters of widespread and exceptional media interest in which there exist possible questions about the government's integrity that affect public confidence.

158. Defendant OIP initially responded on March 18, 2022, (Exhibit IV) stating that Courts are reluctant to grant expedited processing unless a requester can show (1) "that [he] is facing grave punishment [in a criminal proceeding], and (2) that there is reason to believe information will be produced to aid the individual's defense." *Freeman v. United States Department of Justice*, No. 92-0557, slip op. at 4 (D.D.C. Oct. 2, 1992).

159. Plaintiff Anand submitted administrative appeals for FOIA-2022-00404 and FOIA-2022-00877 on March 30, 2022.

160. Plaintiff Neil Anand appealed and requested expedited and rolling disclosure of his FOIA requests (FOIA-2022-00404 and FOIA-2022-00877) for criminal trial preparation in *United States v. Anand*, Crim. A. No. 19-0518 (E.D. Pa.).

161. Requester Anand's upcoming criminal trial mandated expedited FOIA disclosure under *Freeman v. Dep't of Justice*, No. 92-0557 (D.D.C. Oct. 2, 1992) ("exceptional circumstances"/"due diligence": vacates, in part, court's May 22, 1992 order; because of the limited scope of plaintiff's FOIA request and because plaintiff has demonstrated that the information will assist him in his defense against state criminal charges for securities fraud where discovery of these records would not be available, orders the defendant to comply with plaintiff's FOIA request by December 31, 1992; and also by that date, to file a *Vaughn* Index of those documents or document portions for which it invokes exemptions).

162. Requester Anand's upcoming criminal trial preparation in *United States v. Anand*, Crim. A. No. 19-0518 (E.D. Pa.) mandates expedited FOIA disclosure under *Brady* [(*Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963)].

163. The prosecution team in *United States v. Anand*, Crim. A. No. 19-0518 (E.D. Pa.) must disclose, upon request, evidence that is material either to guilt or to punishment. *Gilliam v. Sec'y for the Dep't of Corrections*, 480 F.3d 1027, 1032 (11th Cir. 2007). Such evidence is material only if "there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *United States v. Bagley*, 473 U.S. 667, 682, 105 S.Ct. 3375 3383, 87 L.Ed.2d 481 (1985).

164. *Brady* requires disclosure of material impeachment evidence as well as material exculpatory evidence. *Flores v. Satz*, 137 F.3d 1275, 1278 (11th Cir. 1998)." *Mize v. Hall*, 532 F.3d 1184 (11th Cir. 2008).

165. A Government's failure to disclose the requested *Brady* information that a respondent could have used to conduct an effective cross-examination impairs a respondent's right to confront adverse witnesses.

166. "In *Davis v. Alaska*, . . . the Supreme Court held that the denial of the 'right of effective cross-examination' was "constitutional error of the first magnitude" requiring automatic reversal." 719 F.2d, at 1464 (quoting *Davis v. Alaska*, 415 U.S. 308, 318, 94 S.Ct. 1105 1111, 39 L.Ed.2d 347 (1974).

167. Requester Anand's FOIA request (Exhibit III; FOIA-2022-00877) seeks the background evidentiary documents used by United States Deputy Solicitor General Eric Feigin to argue against *Ruan* and *Khan* in the U.S. Supreme Court, *Ruan v. United States*, 142 S. Ct. 2370, 2380 (2022); these critical documents are not attorney client privileged documents and are thus subject to public

production pursuant to FOIA as the documents constitute compulsory and timely materials that cannot be denied to physician defendants without violating the due process of criminal trials. See *United States v. Presser*, 844 F 2d 1275, 1283 (6th Cir 1988).

168. Furthermore, Fed. R. Crim. P. 16 (a)(1)(E)(i)-(iii) mandates disclosure of compulsory and timely materials "in time for its effective use at trial". The Supreme Court has defined impeachment material as `evidence favorable to an accused . . . so that, if disclosed and use effectively, it may make the difference between conviction and acquittal.' *United States v. Bagley*, 473 U.S. [667], 105 S.Ct. 3375, 3380 [87 L.Ed.2d 481] (1985).

169. Impeachment evidence need not be exculpatory in the traditional sense of tending to negate guilt. Rather, such material deals with the credibility of witnesses.

170. For Plaintiff's FOIA request, FOIA-2022-00404, the OIP Office's Administrative Appeals Staff sent Plaintiff notice of their agreement to re-open Anand's request for expedited processing on April 5, 2022 (Administrative Appeals tracking number: A-2022-01030) and was granted expedited processing by Defendants, USDOJ and OIP, on April 12, 2022 (Exhibit V).

171. For Plaintiff's FOIA request, FOIA-2022-00877, the OIP Office's Administrative Appeals Staff sent Plaintiff notice of their agreement to re-open Anand's request for expedited processing on April 5, 2022 (Administrative Appeals tracking number: A-2022-01029) and was granted expedited processing by Defendants, USDOJ and OIP, on April 12, 2022 (Exhibit VI).

172. The production of evidence held by Defendants concerning the infringement of the Constitutional rights of patients and their physicians by the U.S. executive branch facially threatens the "loss of substantial due process rights" of healthcare professionals nationwide under 28 C.F.R. § 16.5(e)(1)(iii).

173. Additionally, the analysis of the "opioid epidemic" and its subject matter are self-evidently of urgent and intense public interest and concern in which there are possible questions about the government's integrity that affect public confidence under 28 C.F.R. § 16.5(e)(1)(iv).

174. "[T]he basic purpose of FOIA is to ensure an informed citizenry, [which is] vital to the functioning of a democratic society." *NLRB v. Robbins Tire & Rubber Co*., 437 U.S. 214, 242 (1977).

175. "FOIA was [therefore] enacted to 'pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny.'" *Batton v. Evers*, 598 F.3d 169, 175 (5th Cir. 2010) (quoting *Dep't of the Air Force v. Rose*, 425 U.S. 352, 361 (1976)).

176. "Congress has long recognized that 'information is often useful only if it is timely' and that, therefore 'excessive delay by the agency in its response is often tantamount to denial.'" *Open Soc'y Just. Initiative v. CIA*, 399 F. Supp. 3d 161, 165 (S.D.N.Y. 2019) (quoting H.R. REP. NO. 93-876, at 6271 (1974)).

177. When needed, a court "may use its equitable powers to require an agency to process documents according to a court-imposed timeline." *Clemente v. FBI*, 71 F. Supp. 3d 262, 269 (D.D.C. 2014).

178. "[S]tale information is of little value." *Payne Enters., Inc. v. United States*, 837 F.2d 486, 494 (D.C. Cir. 1988). See *Bloomberg, L.P. v. FDA*, 500 F. Supp. 2d 371, 378 (S.D.N.Y. Aug. 15, 2007)

179. See *Halpern v. FBI*, 181 F.3d 279, 284–85 (2nd Cir. 1991) ("[FOIA] emphasizes a preference for the fullest possible agency disclosure of such information consistent with a responsible balancing of competing concerns . . . .").

180. By letters dated November 22, 2021 (Exhibit VII), and April 12, 2022 (Exhibits V & VI), Douglas Hibbard, Director, Division of Freedom of Information, OIP, acknowledged receipt of Plaintiff's requests.

181. Defendants have not yet issued documents or a final determination with respect to Plaintiff Anand's appeal.

182. More than twenty working days, and greater than one year, has passed since Defendants received and made a determination upon Plaintiff's FOIA requests for administrative appeal.

183. Plaintiff Anand has showed Defendants: (1) "that [he] is facing grave punishment [in a criminal proceeding], and (2) that there is reason to believe information will be produced to aid the individual's defense." *Freeman v. United States Department of Justice*, No. 92-0557, slip op. at 4 (D.D.C. Oct. 2, 1992).

184. Plaintiff reasonably exhausted all applicable administrative remedies to obtain the requested documents in a timely manner for use in criminal proceedings in *United States v. Anand*.

185. Plaintiff Anand has a statutory right to the requested records, and there is no legal basis for Defendants failure to make them timely available to Plaintiff Anand and/or the general public.

186. Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c) (2006 & Supp. IV (2010).

187. According to a detailed reading of 5 U.S.C. § 552(c) (2006 & Supp. IV (2010) there is no reasonable reason why Plaintiff's FOIA requests should be denied by Defendants.

188. Defendants have denied Plaintiff Anand access to the agencies' reading rooms.

189. FOIA requires certain agency determinations not merely to be provided upon written request, but to be made available continuously in the agency's reading room. 5 U.S.C. § 552(a)(2) ;

Church of Scientology of Cal. v. IRS, 792 F.2d 153, 159 (D.C.Cir.1986) aff'd, 484 U.S. 9, 108 S.Ct. 271, 98 L.Ed.2d 228 (1987) ; *Jordan v. DOJ*, 591 F.2d 753, 756 (D.C.Cir.1978) (en banc) (observing that subsection (a)(2) records must be made "automatically available for public inspection; no demand is necessary").

190. Such reading room records include "final opinions ... made in the adjudication of cases" and "statements of policy and interpretations which have been adopted by the agency." 5 U.S.C. § 552(a)(2).

191. The requirement "represents a strong congressional aversion to 'secret law,' and represents an affirmative congressional purpose to require disclosure of documents which have the force and effect of law." *NLRB v. Sears, Roebuck, & Co.*, 421 U.S. 132, 153, 95 S.Ct. 1504, 44 L.Ed.2d 29 (1975).

192. Defendants USDOJ, OIP and their HFPP and BCBS partners continue to conceal documents subject to disclosure under FOIA.

193. The concealment of documents subject to disclosure pursuant to FOIA, allows Defendants, USDOJ and Office of Solicitor General, to continue to infringe upon all U.S. Fifty State's sovereignty and through *stare decisis*, permanently upset the legal balance of power between the States and the Federal Government with regards to the practice of medicine as well as the prescribing of controlled substance medications, all in violation of the 9th and 10th U.S. Constitutional Amendments.

Plaintiff Anand Will Suffer Irreparable Harm Absent Judicial Relief

194. Plaintiff will also be unable to recover damages from Defendants, who enjoy sovereign immunity. 5 U.S.C. § 702 (providing for relief "other than money damages").

195. This renders Plaintiffs' injuries or harms "per se" irreparable. See *Feinerman v. Bernardi*, 558 F. Supp. 2d 36, 51 (D.D.C. 2008) (unrecoverable harms are "per se" irreparable); *Smoking Everywhere, Inc. v. FDA*, 680 F. Supp. 2d 62, 77 n.19 (D.D.C. 2010) (similar); see also *Whitman-Walker Clinic, Inc.,* 485 F. Supp. at 64-65 ("'[W]here economic loss will be unrecoverable, such as in a case against a Government defendant where sovereign immunity will bar recovery, economic loss can be irreparable' even if it would not wipe the business out." (quoting *Everglades Harvesting & Hauling, Inc. v. Scalia*, 427 F. Supp. 3d 101, 115 (D.D.C. 2019), and citing additional cases)).

196. In addition to being "beyond remediation," these losses are irreparable because they are "certain and great" for the reasons detailed *supra*. *Whitman-Walker Clinic, Inc*., 485 F. Supp. 3d at 56 (quoting *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297 (D.C. Cir. 2006), and *Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985)).

197. Defendants harms against Plaintiff Anand are "both certain and great; . . . actual and not theoretical and of such imminence that there is a clear and present need for equitable relief." *Olu-Cole v. Haynes Pub. Charter Sch*., 930 F.3d 519, 529 (D.C. Cir. 2019) "These harms from the forced diversion of resources are similar to those recognized as irreparable harm in other suits," *District of Columbia v. USDA*, 444 F. Supp. 3d 1, 42 (D.D.C. 2020), and they far exceed the showing required here.

198. United States District Courts have previously recognized that the effects as described by Plaintiff Anand constitutes irreparable harm. E.g., *Whitman-Walker Clinic, Inc.*, 485 F. Supp. 3d at 58 ("Because of the significant financial and operational harms the health-provider Plaintiff will suffer on account of the 2020 Rule—and the consequent, well-established threat to their ability to deliver timely and effective care to their patients—the Court finds that their asserted injuries clear

the irreparable-harm threshold."). *Texas Children's Hosp. v. Burwell*, 76 F. Supp. 3d 224 (D.D.C. 2014); see also *League of Women Voters v. Newby*, 838 F.3d 1, 9 (D.C. Cir. 2016) (finding irreparable harm when challenged action "ma[de] it more difficult for [organizations] to accomplish their primary mission").

199. Defendants USDOJ and OIP will irreparably harm both chronic intractable pain physicians and substance use disorder physicians, nationwide, by "perceptibly impair[ing]" their "ability to provide services." *Whitman-Walker Clinic, Inc.,* 485 F. Supp. 3d at 56 (quoting *Food & Water Watch,* 808 F.3d 905, 919 (D.C. Cir. 2020)).

200. All in all, "the health-provider" Plaintiff Anand and other U.S. physicians will suffer unrecoverable future harm which is of such a degree, severity, and 'imminence that there is a clear and present need for equitable relief to prevent' it." Id. (quoting *Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985)). "Courts have recognized that such [reputational] harm . . . can constitute irreparable harm sufficient to qualify for a preliminary injunction." *Everglades Harvesting,* 427 F. Supp. 3d at 116.

201. As a result of the aforementioned irreparable injuries Plaintiff Anand has rights pursuant to the FOIA Act to receive expedited information on a rolling basis from the Defendants and also have an express right to seek a preliminary injunction against Defendants USDOJ and OIP.

202. Since the purpose of Plaintiff's FOIA request is to advance the public interest, Plaintiff Anand accordingly requested that Defendants waive any fees and charges that would normally be imposed in connection with Defendants' handling of Plaintiff Anand's request.

The Balance of Equities and the Public Interest Strongly Favor A Preliminary Junction

203. When a preliminary injunction of agency action is sought against the government, harm to the opposing party and the public interest merge into a single inquiry "because the government's

interest *is* the public interest." *Pursuing Am.'s Greatness v. FEC*, 831 F.3d 500, 511 (D.C. Cir. 2016) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)).

204. The Court thus weighs the harm to the movants absent a stay against the impact of a stay on the government and the public interest. *Id.*

205. Here, the harms to U.S. physicians and their patients far outweigh any potential harm to the government. The government cannot suffer harm from a preliminary injunction that merely ends an unlawful practice or reads a statute as required. *R.I.L-R v. Johnson*, 80 F. Supp. 3d 164, 191 (D.D.C. 2015) (citation omitted); *see also League of Women Voters*, 838 F.3d at 12 ("There is generally no public interest in the perpetuation of unlawful agency action." Rather, "there is a substantial public interest in having governmental agencies abide by the federal laws that govern their existence and operations." *Id.*

206. Finally, "[t]here is clearly a robust public interest in safeguarding prompt access to health care." *Whitman-Walker Clinic, Inc*., 485 F. Supp. at 61; see *New York v. DHS*, 969 F.3d 42, 87-88 (2d Cir. 2020) (finding that public interest favored preliminary injunction where agency action would likely result in worse health outcomes); *California v. Azar*, 911 F.3d 558, 582 (9th Cir. 2018).

207. As a result of the aforementioned necessity of Plaintiff Anand and other U.S. physicians nationwide concerning the Balance of Equities and the Public Interest, Plaintiff Anand has an express right to seek a preliminary injunction against Defendants USDOJ and OIP.

The Existence of Cross Claims and Necessity For Freedom of Information Act Requests

208. Plaintiff Anand is a doctor involved in the treatment of chronic pain patients and substance use disorder patients; most or all of them are deemed disabled, and entitled to medical

diagnosis and treatment under the American Disability Act, the Rehabilitation Act of 1974, Controlled Substance Act 802 § (56)(c), among other statutes.

209. Controlled substance medications are typically used for the mitigation of chronic pain and treatment of substance use disorders.

210. USDOJ, HFPP, BCBSA, HHS, OIG, DEA, FBI, Qlarant among other partners of the "Joint Enterprise", have the burden of production and the burden of persuasion in the identification of people who are alleged to have violated the Controlled Substance Act and committed healthcare fraud.

211. Qlarant, GDIT, BCBSA, and the HFPP partners possess the names, the addresses, and the documents describing the nature and quality of acts, by patients and/or prescribers of the controlled substance medications, whom are alleged to have violated the Controlled Substance Act or other healthcare fraud statutes.

212. Plaintiff Anand seeks the names of the patients and U.S. Physicians deemed by law enforcement to have violated the Controlled Substance Act and/or federal healthcare fraud statutes.

213. Plaintiff Anand is a physician prescriber against whom, at least one member of the HFPP cartel, Independence Blue Cross, has lodged a criminal complaint.

214. USDOJ, HFPP, HHS, OIG, DEA, Qlarant among other partners of the "Joint Enterprise" know, or should know, the name of patients or individuals, who may have either received or misused controlled substance medications, in violation of the Controlled Substance Act and/or federal healthcare fraud statutes.

215. Upon information and belief these "patients" induced criminal proceedings against Plaintiff Anand and other U.S. physicians nationwide.

216. Many U.S. physicians including Plaintiff Anand had voluntary, controlled substance agreements with prospective and bona fide patients being prescribed controlled substances for the treatment of medical diseases.

217. These agreements or covenants established a duty of the patients, to use their controlled substance medications in a reasonable manner.

218. Pursuant to the controlled substance medication agreement, the patients had a duty to take their controlled substance medications in a lawful manner.

219. These patients have caused U.S. physicians including Plaintiff Anand to be a defendant in federal criminal actions.

220. By their unreasonable action, certain patients violated their duty of reasonable care owed to U.S. physicians including Plaintiff Anand, as also codified by their signed voluntary agreements or covenants.

221. These patients breached their duty of due care owed to U.S. physicians including Plaintiff Anand.

222. It is widely known, publicized and obvious that violations of the Controlled Substance Act may induce criminal proceedings, incarceration, forfeiture, and restitution against U.S. physicians.

223. It was foreseeable to the Government that these "patients" would breach their duty and would damage and incapacitate U.S. physicians including Plaintiff Anand.

224. But for the actions of certain "patients", criminal proceedings would not have been started by law enforcement against U.S. physicians nationwide including Plaintiff Anand.

225. Patients who breached their duty of due care due to unreasonable acts, are the actual and proximate cause of damages suffered by U.S. physicians nationwide including Plaintiff Anand.

226. Plaintiff Anand avers that he suffered personal injury, property damage, intense emotional distress, fright, nervous shock, humiliation of incarceration, loss of freedom, and loss of the ability to practice medicine in a race-neutral and specialty-neutral manner.

227. Plaintiff Anand and U.S. physicians nationwide have a cause of action based on the unreasonable, negligent action of certain breaching "patients".

228. Defendants, HFPP, HHS, OIG, DEA, and Qlarant among other partners of the "Joint Enterprise" know, who those "patients" are.

229. Where those "patients" who breached their signed voluntary agreements or covenants to cause Plaintiff Anand and other U.S. physicians nationwide to be defendants in federal criminal indictments, Plaintiff Anand and other U.S. physicians nationwide are entitled to file cross claims against the breaching patients.

230. Plaintiff Anand, U.S. physicians nationwide, and the general public have rights pursuant to FOIA to receive information from Defendants USDOJ and OIP.

Conclusion

Plaintiff Anand in this legal action requires critical and relevant Freedom of Information ("FOIA") documents and information for *Brady, Giglio,* exculpatory, and impeachment purposes for criminal proceedings in *United States v. Anand* (2:19-cr-00518 E.D. Pennsylvania). Criminal defendant Anand, in *United States v. Anand* is entitled to: i) anything used at trial pursuant to Federal Rule of Criminal Procedure ("FRCP") 16; ii) oral, written or recorded statements of the defendant, (FRCP 16); iii) results of tests, medical, scientific, etc. (FRCP 16); iv) exculpatory information pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963); v) impeachment of witnesses, *Giglio v. United States*, 405 U.S. 150 (1972); vi) statements of witnesses, *Jencks v. United*

States, 353 U.S. 657 (1957); vii) illegally obtained evidence pursuant to 18 U.S. Code § 3504 (Litigation concerning sources of evidence).

The U.S. prosecution team in *United States v. Anand*, Crim. A. No. 19-0518 (E.D. Pa.) is continuing to conceal relevant and material information from criminal defendant Anand, in violation of Federal Rule of Criminal Procedure 16 and under legal authorities of *Brady, Giglio* and progeny. Criminal defendant Anand, subsequently sought release of the U.S. prosecution teams' concealed documents through FOIA litigation. Documents obtained through FOIA litigation, in *Neil Anand et al. v. U.S. Department of Health and Human Services et al.* (Civil Action No. 21-1635), where relevant, material, factual and impeachment information was provided by the Government to Anand, describe the novel use of data analytics and computer programs as criminal forensic tools used to generate "targeting packages" for federal law enforcement investigations.

The U.S. Executive Branch and its agencies, Health and Human Services ("HHS"), Office of Inspector General ("OIG"), and Drug Enforcement Agency ("DEA") as well as private members of the "Joint Enterprise" through the utilization of novel criminal forensic tools like data analytics have prosecuted, incarcerated, searched and seized, the financial assets of thousands of similarly situated American doctors and healthcare professionals nationwide. The mass incarceration of medical professionals nationwide has generated great public interest in the complete FOIA release of documents requested by Plaintiff Neil Anand (FOIA-2022-00404 and FOIA-2022-00877) in this legal action from Defendants USDOJ, and OIP.

Plaintiff Anand seeks Freedom of Information Act materials with respect to *United States v. Anand*, Crim. A. No. 19-0518 (E.D. Pa.). A Multi-Jurisdictional Prosecution Team in *United States v. Anand* utilized novel criminal forensic tools including data analytics and computer

algorithms to generate "targeting packages" and "pre-seizure identification of the most likely drug seeking patients" for countless investigative interviews of Defendant Anand's patients, prior to obtaining a search warrant for Defendant Anand's medical records. FOIA litigation in this action greatly impacts Defendant Anand's ongoing, concurrent and pending criminal proceedings in *United States v. Anand* (2:19-cr-00518 E.D. Pennsylvania).

The U.S. Department of Justice also has a responsibility in ensuring that criminal defendant Anand, receives a fair trial. Anand argues that he is innocent until proven guilty under U.S. Constitutional Law, and has a right and liberty interest, necessitating the Granting of the Freedom of Information Act requests as they pertain to *United States v. Anand*, Crim. A. No. 19-0518 (E.D. Pa.). Justice requires that the Court Order the release of relevant information, subject to the Freedom of Information Act, to ensure fair and just trials against physicians and other healthcare professionals nationwide, as afforded by the United States Constitution, which the Founding Fathers established to limit and restrict Government POWER.

Plaintiff Anand also seeks FOIA information for *Brady*, *Giglio*, exculpatory, and impeachment purposes. Plaintiff Anand argues that denial of FOIA information by USDOJ and OIP denies critical documents to criminal defendant physicians and healthcare professionals nationwide, which will generate an error that will affect Dr. Anand's and other American healthcare professional's substantial rights and ongoing criminal trials, for plain error purposes.

The Due Process Clause of the 5th and 14th Amendment to the U.S. Constitution, is not violated when a prosecutor exercises discretion in, whether or not to prosecute, and what charges to bring before a grand jury, so long as the decision is not intentionally based on race, religion, or some other unjustifiable classification. *United States v. Armstrong et al.* certiorari to the United

States Court Of Appeals For The Ninth Circuit No. 95-157. Argued February 26, 1996-Decided May 13, 1996; see also *Bordenkircher v. Hayes*, 434 U.S. 357 (1978).

Criminal defendants selected for prosecution by Government and their Prosecution Teams, are subject to Constitutional law, such as 14th Amendment Equal Protection Clause. Under the equal protection component of the Fifth Amendment's Due Process Clause, the decision whether to prosecute may not be based on an arbitrary classification such as race or religion. *Oyler v. Boles*, 368 U. S. 448, 456; *United States v. Wayte*, 710 F.2d 1385, 1387 (CA9 1983), aff'd, 470 U. S. 598 (1985)).

Plaintiff Anand in this litigation argues that the selective prosecutorial policy of the Government and their Prosecution Team in *United States v. Anand*, as well as other criminal cases against U.S. physicians nationwide, has had a discriminatory effect and was motivated by a discriminatory purpose. To establish a discriminatory effect in a race case, criminal defendant Anand in *United States v. Anand* must show that similarly situated individuals of a different race were not prosecuted. *Ah Sin v. Wittman*, 198 U. S. 500. *Batson v. Kentucky*, 476 U. S. 79, and *Hunter v. Underwood*, 471 U. S. 222. Although *Ah Sin* involved federal review of a state conviction, a similar rule applies where the power of a federal court is invoked to challenge an exercise of one of the core powers of the Executive Branch of the Federal Government, the power to prosecute. Discovery imposes many of the costs present when the Government must respond to a prima facie case of selective prosecution. Assuming that discovery is available on an appropriate showing in aid of a selective-prosecution claim, see *Wade v. United States*, 504 U. S. 181, the justifications for a rigorous standard of proof for the elements of such a case thus require a correspondingly rigorous standard for discovery in aid of it. Thus, in order to establish

entitlement to such discovery, a defendant must produce credible evidence that similarly situated defendants of other races could have been prosecuted but were not.

Plaintiff Anand and other persecuted physicians of color nationwide have produced credible evidence in numerous Courts of law that similarly situated defendants of other races could have been prosecuted but were not. See *Felix Brizuela v. Highmark Blue Cross Blue Shield of Pennsylvania* Civil Action No. 23-337; *Kaul v. Horizon Blue Cross Blue Shield and Robert A. Marino* 23-cv-00518 (ES)(AME); *Lesly Pompy, and Interventional Pain Management Associates, P.C., v. Blue Cross Blue Shield of Michigan, Marc Moore, and Brian Bishop* No. 2:19-cv-10334; *Neil Anand v. Independence Blue Cross (Ed. P.A.)*; *Neil Anand and Institute of Advanced Medicine and Surgery v. Pennsylvania Department of Insurance*, (Office of Open Records Docket No: AP 2022-0319 & Docket No: AP 2021-2402); *Neil Anand v. Commonwealth of Pennsylvania Office of Attorney General Pennsylvania* (No. 663 CD 2022 Commonwealth Ct. 14 Pa.; No. 493 MD 2022).

Plaintiff Anand seeks documents and evidence pursuant to FOIA from the U.S. Department of Justice and Office of Information Policy to show to the Court or Trial Jury in *United States v. Anand* the factual basis for a finding that: 1) The Government's pursuit of criminal cases against U.S. physicians nationwide reveals a pattern, policy, or practice of deliberate indifference or contempt of the fundamental rights of American criminal defendant physicians and healthcare professionals; 2) preliminary analysis of Government's, USDOJ's and the "Joint Enterprise's" actions reveals statistical overrepresentation of American physicians and healthcare professionals that are prosecuted, convicted, and/or incarcerated, are persons of color, representing various minority nations of origin; 3) hard evidence that the USDOJ, Government, and "Joint Enterprise" are using unreliable and untrustworthy, novel criminal forensic tools.

Plaintiff Anand further alleges that the Government in *United States v. Anand* committed prosecutorial misconduct against criminal defendant Anand through fabricated evidence and fraudulent Grand Jury proceedings requiring FOIA documents. FOIA document release to Plaintiff Anand would allow him to assert claims of Constitutional violations and prosecutorial misconduct by the Government. The Prosecution Team in *United States v. Anand*, either knew or should have known, of a certain propensity for prosecutorial misconduct to be committed by untested, unreliable, and invalid, data analytic, criminal forensic tools. Plaintiff Anand intends to show the Jury at trial in *United States v. Anand*, evidence obtained lawfully under FOIA law, that Constitutional violations by the U.S. Executive Branch as asserted by Dr. Neil Anand, occurred in such a frequency so to constitute a pattern, custom, or practice.

Plaintiff Anand further alleges that an express or implied contract existed between the franchisees of Blue Cross Blue Shield Association ("BCBSA"), Independence Blue Cross (IBC) among other franchisees of BCBSA, GDIT, Qlarant NBI MEDIC, DEA, OIG, CMS, Medicare, Medicaid, and USDOJ law enforcement. The parties above formed a joint partnership, named, HFPP (Health Care Fraud Partnership) which is also an instrumentality of interstate commerce. By the concerted action seeking a particular result, the private entities of the joint enterprise including but not limited to HFPP, Qlarant, IBC, BCBSA, and GDIT, have advertised their intentional misrepresentation of federal statutes, so to induce reliance by law enforcement against U.S. physicians nationwide. Where law enforcement justifiably, but unreasonably, relied on the misrepresentation, in generating manufactured probable cause, in U.S. physicians selected for federal indictment, constitutes Fraud. As a result of the misrepresentation, U.S. physicians nationwide have suffered personal, pecuniary, and property losses.

The public/private partnership, HFPP (Healthcare Fraud Prevention Partnership), established a "pre-crime", industry wide, standard for the criminal forensic, software monitoring products. The HFPP, industry-wide, standard selects physicians based on race and nation of origin as a suspect class for selective prosecution. HFPP prevents those selected U.S. physicians from practicing medicine in a race –neutral manner by coordinating selective enforcement of the Controlled Substance Act and other healthcare fraud statutes on the suspect group of physicians. HFPP broke down the Chinese wall between the private health insurers and U.S. Executive Branch agencies, DEA/FBI/OIG/CMS/USDOJ, while encouraging the performance of improper search and seizure of the privileged medical records and personal identification data of patients treated by the suspect class of U.S. physicians. The controlled substance medication and healthcare fraud monitoring, criminal forensic software is defective on an industry-wide basis.

The HFPP joint enterprise marketed, compiled, summarized, and disseminated the information to the members of the "pre-crime" industry. The HFPP joint enterprise excludes other health insurers and healthcare professionals from the data sharing. In violation of §1 of the Sherman Act, the HFPP joint enterprise provides a vehicle that deprives the marketplace of independent decision making. Parties acting together to accomplish a particular result, are involved in a concert of action that makes any members of the party vicariously liable for the torts committed by the others. The members of the joint enterprise (Exhibit I) created by USDOJ, HHS, DEA, BCBS, Qlarant, CMS, HFPP and GDIT TTP: 1) intruded into the corporate practice of medicine violating 42 U.S.C. § 1395; 2) codified their actions jointly via the partnership in the HFPP, violating 42 U.S.C. § 1395, without substantial and procedural, due process safeguards; 3) failed to monitor the continuation of medical care of the patients that was once provided by criminally indicted physicians, but no longer due to criminal proceedings induced by the HFPP.

The HFPP regularly issues reports and white papers that make recommendations to healthcare payers, employer organizations, HHS, DEA, USDOJ, FBI, OIG, CMS, etc. The Healthcare Fraud Prevention Partnership (HFPP) joint enterprise operates largely in the dark, in violation of the Federal Advisory Committee Act (FACA). Statutory notice of the meetings to health insurance and healthcare competitors of HFPP, IBC, BCBSA did not occur, in violation of FACA. The FACA violations creates a foreseeable risk of serious harm even when reasonable care is exercised by all actors. The FACA violations are not in common usage by other health insurance or healthcare companies. The activities leading up to the FACA violations are abnormally dangerous activities.

Where U.S. patients fundamental right to medical treatment is violated under conflict of laws, statutes and guidelines pursuant to: 1) CFR 42 § 2.61-2.67; 2) the Americans with Disabilities Act, 42 U.S.C. §12101, et seq.; 3) the Rehabilitation Act of 1973, 29 U.S.C. §701, et seq.; 4) the Affordable Care Act, 42 U.S.C. §18116, et seq; 5) the Nuremberg Code §4 and §44 Code of the Geneva Convention; 6) the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) "pain as the 5th Vital Sign"; 7) Emergency Treatment and Labor Act (EMTALA) laws; 8) the Controlled Substance Act (CSA 802 (56)(c)); 9) the Drug Addiction Treatment Act of 2000 (Data 2000) under Substance Abuse and Mental Health Services Administration (SAMSHA); 10) Physicians For Responsible Prescribing (PROP) guidelines; 11) the 2016, and 2022, CDC Guidelines for Prescribing Opioids for Chronic Pain; 12) the pharmacist's corresponding responsibility under CFR 1306.04 (a) where dispensing of a prescription, ratifies the validity of that prescription for controlled substance medications; 13) health insurance prior-authorization of health services and medications; 14) Pharmacy Benefit Manager (PBM) formularies; and 15) the 2019 HHS "Best Practices - Pain Management

Guidelines"; there exists a basis for the use of strict scrutiny standard for judicial review, regarding the release of FOIA documents, information and affidavits, supporting the search and seizure of Prescription Drug Monitoring Programs (PDMP) and medical records of U.S. physicians nationwide. Where classification of U.S. citizens, U.S. patients, and U.S. physicians are based on race and nation of origin, as compiled by USDOJ, DEA, HHS, CMS, HFPP, GDIT, Qlarant, BCBSA, IBC, and the "Joint Enterprise", Plaintiff Anand is entitled to that information, under a judicial review under a rational basis scrutiny standard.

Furthermore, the "Joint Enterprise's" data analytic software is intended to coordinate, strengthen, and speed criminal convictions of U.S. physicians nationwide, using a medical malpractice evidentiary standard of evidence as probable cause of criminal intent, violating the U.S. Constitution, which is not reasonable. The "Joint Enterprise", USDOJ, CMS, Qlarant, HFPP, BCBSA, and IBC, "pre-crime" software carries a high risk of death, disability, and of inducing false criminal proceedings against U.S. healthcare professionals. As such, Defendant USDOJ is the primary U.S. government partner of the HFPP and also overseer of Government contractor, HFPP's activities, which imposes upon Defendant USDOJ an absolute duty to make sure such activities are safe to the public. Unfortunately, the dangerous aspects of these aforementioned activities are the actual and proximate cause of injury in hundreds to thousands of patients nationwide. USDOJ, DEA, HHS, CMS, HFPP, GDIT, Qlarant, BCBSA, IBC, and other partners of the "Joint Enterprise" are involved in an abnormally dangerous activity, for which Defendant USDOJ is strictly liable.

Due to potential conflicts of interests involving the private insurer state actors, restraint of trade, and FACA violations, and ongoing damages to the public, a request was made for Defendant USDOJ and OIP to grant an Expedited Processing on a rolling basis pursuant to

5U.S.C. § 552(a)(6)(E)(vi) and 28 C.F.R. § 16.5(e), concerning all Freedom of Information Act as requested above pertaining to Qlarant NBI Medic, HFPP, Blue Cross Blue Shield Association, Independence Blue Cross, or Office of Solicitor General.

The U.S. Department of Justice has the burden of proof, at a jury trial, to prove beyond a reasonable doubt, that each of the criminally indicted U.S. physicians actually committed all the elements of the alleged crimes, in the absence of justifications or excuses. Requester Anand is currently facing federal felony charges relating to health care fraud and controlled substances in *United States v. Anand*, Crim. A. No. 19-0518 (E.D. Pa.). The indictments in the criminal case against Anand assert that he illegally prescribed and distributed various commonly abused opioids. Requester Anand is presumed innocent, and has elevated status to obtain FOIA information from the USDOJ for impeachment purposes at Anand's criminal trial. The outcome of criminal proceedings for criminal defendant Anand would be different without the release of the information from Defendants USDOJ and OIP as requested by Plaintiff Anand via FOIA. The refusal of the Defendants to release the information would lead to a finding of cumulative error. The Defendants denial of release of the FOIA information requested in an expedited rolling process will be prejudicial to Anand in his upcoming criminal trial, *United States v. Anand*, Crim. A. No. 19-0518 (E.D. Pa.). The failure of Defendants USDOJ and OIP to release the requested FOIA information will reduce the chance of criminal defendant Anand to defend each element of the charged crime in *United States v. Anand*, Crim. A. No. 19-0518 (E.D. Pa.). The Defendants' error and failure to process Plaintiff Anand's FOIA requests in an expedited rolling process would not be harmless.

PRAYER FOR RELIEF

The relief requested is authorized pursuant to 28 U.S.C. §§ 2201, 2202 (declaratory and related relief), 28 U.S.C. § 1651 (injunctive relief via all writs act), 42 U.S.C. § 1983 (relief for deprivation of rights, privileges, and immunities secured by the constitution), 28 U.S.C. § 1343 (relief for the protection of civil rights), and 42 U.S.C. § 1988 (award for fees and costs).

The Courts provide pro se parties wide latitude when construing their pleadings and legal filings. When interpreting pro se filings, the Court should use common sense to determine what relief the party desires. *S.E.C. v. Elliott*, 953 F.2d 1560, 1582 (11th Cir. 1992). See also, *United States v. Miller*, 197 F.3d 644, 648 (3rd Cir. 1999) (Court has special obligation to construe pro se litigants' pleadings liberally); *Poling v. K. Hovnanian Enterprises*, 99 F.Supp.2d 502, 506-07 (D.N.J. 2000). Courts will go to particular pains to protect pro se litigants against consequences of technical errors if injustice would otherwise result. *U.S. v. Sanchez*, 88 F.3d 1243 (D.C. Cir. 1996).

Plaintiff Anand is a Pro Se litigant, and his submissions to this Court are to be construed liberally and held to less stringent standards than submissions of lawyers. If the court can reasonably read his submissions, it should do so despite failure to cite proper legal authority, confusion of legal theories, poor syntax and sentence construction, or litigant's unfamiliarity with rule requirements. See *Boag v. MacDougall*, 454 U.S. 364, 102 S.Ct. 700, 70 L.Ed.2d 551 (1982); *Estelle v. Gamble*, 429 U.S. 97, 106, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976)(quoting *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957)); *Haines v. Kerner*, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972); *McDowell v. Delaware State Police*, 88 F.3d 188, 189 (3rd Cir. 1996); *United States v. Day*, 969 F.2d 39, 42 (3rd Cir. 1992)(holding pro se

petition cannot be held to same standard as pleadings drafted by attorneys); *Then v. I.N.S.*, 58 F.Supp.2d 422, 429 (D.N.J. 1999).

WHEREFORE, For the aforementioned reasons, Plaintiff Anand respectfully requests that this Court enter judgment in his favor and GRANT the following relief as follows:

I. For a declaratory judgment pursuant to 28 U.S.C. §§ 2201, 2202, declaring that Defendants failure to timely disclose the records or documents requested by Plaintiff after exhaustion of all administrative appeals is unlawful.

II. For a declaratory judgment pursuant to 28 U.S.C. §§ 2201, 2202, declaring that Defendant USDOJ has violated Plaintiff Anand's rights, privileges and immunities under the First, Fourth, Fifth, Ninth, Tenth and/or Fourteenth Amendments to the United States Constitution.

III. For a declaratory judgment pursuant to 28 U.S.C. §§ 2201, 2202, declaring that Defendant USDOJ's partners, HFPP, GDIT, Qlarant, BCBSA, and/or IBC, as state actors have violated Plaintiff Anand's rights, privileges and immunities under the First, Fourth, Fifth, Ninth, Tenth or Fourteenth Amendments to the United States Constitution, and as private actors have violated Sherman, Clayton and Controlled Substance Acts among others.

IV. For a declaratory judgment pursuant to 28 U.S.C. §§ 2201, 2202, declaring that Defendants USDOJ and OIP make public, as soon as reasonably possible, the formulas, the equations, the names of the creators and designers, the reliability studies, the efficacy studies and the validity studies pertaining to the utilization of computer algorithms as criminal forensic tools by United States Department of Justice (USDOJ), Health and

Human Services (HHS), Federal Bureau of Investigation (FBI), Office of Inspector General (OIG) and Drug Enforcement Agency (DEA).

V. For a declaratory judgment pursuant to 28 U.S.C. §§ 2201, 2202, declaring that Defendant USDOJ acted unlawfully for/because: (i) HFPP private insurers are companies that are pervasively entwined with Qlarant NBI Medic, and General Dynamics Information Technology that unlawfully promulgated the provisions of the CDC Guideline for Prescribing Opioids for Chronic Pain, concerning the treatment of patients with controlled substance medications; (ii) Defendant did so without providing public notice and comment; (iii) Defendant did so in violation of FACA; and (iv) one or more of the parties to this HFPP agreement, committed acts that are themselves torts against physicians nationwide in pursuance of the agreement amongst the partnership or joint enterprise.

VI. For declaratory judgment pursuant to 28 U.S.C. §§ 2201, 2202, declaring that that Defendant USDOJ's contractor, NBI Medic-Qlarant's actions constitute: a) the judicial engineering of procedural legal irregularities (particularly speeding of criminal convictions, coordinating for criminal convictions, strengthening of criminal convictions, manipulation of data, creation of false evidence, tainted evidence, spoliated evidence and/or evidence tampering/destruction); b) one or more questionable departures from well-established legal precedent; c) undisclosed grounds for adverse credibility determinations; d) an arguable usurpation of legislative powers; e) judicial proscriptions that are the functional, civil equivalent of *ex post facto* law; f) and/or conspiring in a total or substantial denial of relief of medical care pursuant to some form of judicial engineering.

VII. For a national preliminary and/or permanent injunction pursuant to 28 U.S.C. § 1651(a), 42 U.S.C. § 1983, 28 U.S.C. § 1343, and Rule 65 of the Federal Rules of Civil Procedure requiring Defendant USDOJ to immediately cease or, at a minimum, appropriately limit all ongoing investigations of U.S. physicians or U.S. citizens utilizing unpublished, unverified, or unreliable computerized, data analytic, criminal forensic algorithms pending resolution of this action.

VIII. For a national preliminary and/or permanent injunction pursuant to 28 U.S.C. § 1651(a), 42 U.S.C. § 1983, 28 U.S.C. § 1343, and Rule 65 of the Federal Rules of Civil Procedure, granting Plaintiff Anand relief from Defendant USDOJ ongoing, for purposes of saving future human life through the removal from HFPP healthcare payors: a) prior authorization, b) step therapy, c) inappropriate administrative burdens or barriers that delay or deny care for FDA-approved medications used as part of medication-assisted treatment for chronic intractable pain or opioid use disorder as determined by the HHS Pain Management Task Force.

IX. For a national preliminary and/or permanent injunction pursuant to 28 U.S.C. § 1651(a), 42 U.S.C. § 1983, 28 U.S.C. § 1343, and Rule 65 of the Federal Rules of Civil Procedure, granting Plaintiff Anand relief from Defendant USDOJ ongoing, for the purposes of saving future human life and also support maternal and child health by increasing access to evidence-based treatment, preserving families and ensuring that policies are nonpunitive, from the HFPP private insurers who are engaging in: a) unlawful concerted efforts to oppose assessment, referral and treatment for co-occurring mental health disorders; b) avoidance of meaningful oversight and enforcement of state and federal mental health and substance use disorder parity laws; c) a failure to demonstrate parity

compliance; d) concerted efforts to increase administrative and other barriers to comprehensive, multi-modal, multidisciplinary pain care and rehabilitation programs.

X. For a national preliminary and/or permanent injunction pursuant to 28 U.S.C. § 1651(a), 42 U.S.C. § 1983, 28 U.S.C. § 1343, and Rule 65 of the Federal Rules of Civil Procedure, barring the Defendant USDOJ from participating in the HFPP or alternatively barring private health insurers from participating in the HFPP, due to identified violations of the Sherman, Clayton, Federal Trade Commission Acts, etc; or allowing in the alternative: i) physicians the ability to modify Health and Human Services 855i Medicare Enrollment Application and allow negotiation of the provision of medical services via an hourly rate, price, or by quality of services offered; ii) individual physicians the ability to modify HFPP private insurer provider agreements for the provision of medical services via an hourly rate, price, or by quality of services offered; iii) physicians the ability to modify agreements with Drug Enforcement Agency (DEA) concerning Certificate of Registrations (COR) to avoid conflicts with valid agreements or contracts between physicians and the HFPP private insurers.

XI. Enter a national preliminary and/or permanent injunction pursuant to 28 U.S.C. § 1651(a), 42 U.S.C. § 1983, 28 U.S.C. § 1343, and Rule 65 of the Federal Rules of Civil Procedure, against Defendants directing Defendants to comply fully and without further delay, with the Freedom of Information Act, and to furnish Plaintiff Anand all public documents meeting the description in his requests.

XII. Order Defendants to prepare a *Vaughn* Index and make the requested records available to Plaintiff Anand immediately within Defendants' (OIP and USDOJ) reading rooms pursuant to 5 U.S.C. § 552(a)(2).

XIII. Order that because their delay in complying with their obligations under the Freedom of Information Act was without substantial justification, Defendants must produce the documents requested in full, either electronically or waive all fees associated with Plaintiff Anand's requests.

XIV. Order Defendants USDOJ and OIP to make the requested records available on an expedited and rolling basis to Plaintiff Anand.

XV. Award Plaintiff Anand his costs and reasonable fees in this action. 42 U.S.C. § 1988

XVI. Grant such other and further relief as the Court deems just and proper pursuant to FED. R. CIV. P. 54(c).

Respectfully Submitted,

/s/ Neil Anand

NEIL ANAND Pro Se Plaintiff

Dated: June 29, 2023

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