

No. 12-207

IN THE
Supreme Court of the United States

STATE OF MARYLAND,

Petitioner,

v.

ALONZO JAY KING, JR.,

Respondent.

**On Petition for a Writ of Certiorari
to the Court of Appeals of Maryland**

**BRIEF FOR AMICUS CURIAE
DNA SAVES IN SUPPORT OF PETITIONER**

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INTEREST OF AMICUS CURIAE

DNA Saves is a 501(c)(4) non-profit association that educates policy-makers and the public about the value of forensic DNA.¹ DNA Saves was formed by

¹ No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. The following persons made such a monetary contribution: Lisa Adair, Mike Antiporda, BES Rental & Sales, Jesus Becarra, Francis Beeman, Deborah Benjamin, John Benjamin, Dale Bowman II, Dan Boyd, Joe Brininstool, Cathrynn Novich Brown, Greg Brown, Carole Bryant, Charles Burton, Terry Burton, Marinda Calderon, John Caraway, Suzanne Carlsen, Staci Carrell, Tricia Chace, Carol Chelkowski, Cielo Vista Apartments, Mike Cleary, T. Arlene Cooper, Danny Cross, Mike Currier, Linnie Davis, Samuel Denman, Christy Dickerson, Tommy and Sheryl Dugger, Kathy Elmore, Diane Esquibel,

Jayann and David Sepich in late 2008, marking the five year anniversary of the vicious murder of their daughter, Katie. Had a DNA sample been taken from Katie's murderer, Gabriel Avilla, upon arrest for an unrelated crime, the Sepichs would have discovered who killed their daughter only three months after her death. Instead, Avilla remained free for over three years to victimize more daughters, while the Sepichs waited for answers. The Sepichs hope that by advocating for better DNA testing laws they can prevent other parents from asking "why?"

DNA Saves is committed to working with every state and the federal government to pass laws allowing DNA to be taken upon arrest, and to provide meaningful funding for DNA programs. In January

Laura Florez, Jeffrey Foote, Jeri Forsha, David Fritschy, Myrtle Fritschy, Patty Fugate, Danielle Galloway, Deanna Garringer, Mike Garringer, Jeanne Hall, Chad Hewitt, Todd Hyden, Matthew John, Chris Jones, Kathy M. Jones, Davis W. Kayser, Erin Kennedy, Debra Kimbley, Cindy Klein, Jeff Knox, Jody Knox, Gary Lanier, Jan Lemons, Janice Leons, Life Technologies, Matt Leroch, Tracy Leroch, Rita London, Sam Mendez, Gabriel Lujan, Carlsbad Mall, Charles and Phyllis McEndree, Justin McGeath, Rebecca McIntyre, Nessa Meadows, Larry Mitchell, Lila Mohesky-Roybal, Robert Murray, S. Narajaman, Juanita Otero, PR Consultants, Inc., Pat Patterson, Terishala Patel, Sandy Pierson, Michael Potter, John Richter, Sepco, Inc., Resource Management, Dave & Kim Rogers, Shauna Rodgers, Alvaro Ruiz, Robert Schumacher, Jeffrey Schwartz, Dave and Jayann Sepich, Mike and Karen Sepich, Roger and Cindy Short, Service Solutions, Kassie Simmons, Craig Stephens, Sheri Stephens, Brenda Suggs, Natosha Temple, Paul Trone, Dustin Walker, Judi Waters, Janelle Whitlock, Richard Wilkinson, Sharon A. Williams, Connie Wilson, James Wood, and Bob and Caroline Yeager.

Pursuant to S. Ct. R. 37.2(a), counsel of record for petitioner and respondent received timely notice of the intent to file this brief, and the parties have consented to the filing of this brief.

2007, New Mexico implemented “Katie’s Law,” which requires DNA profiles for most felony arrestees to be included in the federal database known as CODIS. New Mexico’s program has already registered at least 344 matches of unsolved crimes to 307 individual arrestee DNA profiles. Twenty-five of those matches identified suspects in unsolved murders, and 50 identified suspects in unsolved sex-related crimes. The very first arrestee sample was matched to a double homicide case, leading to a conviction.

DNA Saves is also vitally committed to ensuring that courts correctly apply the Constitution and allow legislatures to enact these sensible and effective laws, and has filed amicus briefs supporting that result in several other cases raising the same issue as this case. The resolution of this issue will have a direct and profound effect on DNA Saves’ efforts to expand the use of DNA identification of arrestees throughout the country so that more recidivist crime can be prevented.

INTRODUCTION

As the petition explains, there is a direct and irreconcilable split among the lower courts on the constitutionality of DNA identification of arrestees. *Compare United States v. Mitchell*, 652 F.3d 387 (3d Cir. 2011) (en banc) and *Anderson v. Commonwealth*, 274 Va. 469, 650 S.E.2d 702 (2007) (finding no Fourth Amendment violation) with *King v. State*, 425 Md. 550, 42 A.3d 549 (2012) and *Mario W. v. Kaipio*, 230 Ariz. 122, 281 P.3d 476 (2012) (finding Fourth Amendment violation).²

² *Compare also Haskell v. Harris*, 669 F.3d 1049, 1065 (9th Cir.), vacated upon grant of reh’g en banc, 686 F.3d 1121 (9th Cir. 2012) and *United States v. Pool*, 621 F.3d 1213 (9th Cir.

DNA Saves files this brief to further amplify why the issue is of overriding importance to the thousands of potential victims whose names will never be known but who could be saved from death or serious harm through this simple but powerful identification technology. This brief also points out some of the critical legal errors made by the court below. The Court should grant certiorari to correct those errors and hold that no arrestee has a constitutional right to hide his identity so that nobody can know what crimes he has committed or may commit in the future.

ARGUMENT

I. ARRESTEE DNA IDENTIFICATION SOLVES AND PREVENTS CRIME, AND PROTECTS THE INNOCENT.

Law enforcement has long identified arrestees by their fingerprints, which are routinely matched to crime scene evidence to solve crimes. A DNA profile of the sort collected in this case is no different: it “is used solely as an accurate, unique, identifying marker—in other words, as fingerprints for the twenty-first century.” *Mitchell*, 652 F.3d at 410. DNA identification is “one of the most important advances in criminal identification methods in decades.” H.R. Rep. No. 106-900, pt. 1, at 9 (2000). “The information derived from [DNA] is substantially the same as that derived from fingerprinting—an identifying marker unique to the individual from whom the information is derived.”

2010), *vacated as moot upon en banc review*, 659 F.3d 761 (9th Cir. 2011) (finding no Fourth Amendment violation) *with People v. Buza*, 197 Cal. App. 4th 1424 (2011), *review granted*, 132 Cal. Rptr. 3d 616, 262 P.3d 854 (2011).

Rise v. Oregon, 59 F.3d 1556, 1559 (9th Cir. 1995). But “DNA is a further—and in fact a more reliable—means of identification” than fingerprints. *United States v. Sczubelek*, 402 F.3d 175, 184 (3d Cir. 2005). See also *Green v. Berge*, 354 F.3d 675, 679 (7th Cir. 2004) (“DNA is the most reliable evidence of identification—stronger even than fingerprints or photographs.”). DNA profiling is now the gold standard of identification techniques. Physical and facial appearances can be changed, driver’s licenses forged, and fingerprints concealed during crimes. But everyone leaves their DNA everywhere they go.

As Chief Justice Roberts recognized in granting a stay in this case, arrestee DNA identification “provides a valuable tool for investigating unsolved crimes and thereby helping to remove violent offenders from the general population. Crimes for which DNA evidence is implicated tend to be serious, and serious crimes cause serious injuries.” *Maryland v. King*, No. 12A48, 2012 WL 3064878, at *2. (U.S. July 30, 2012). Virginia, which began arrestee DNA testing in 2003, shows how arrestee profiles can assist in solving and preventing crime. As of July 31, 2012, there were 352,888 DNA profiles in the state database, resulting in 8,184 hits. See State of Virginia, Dep’t of Forensic Science, *DNA Databank Statistics* (www.dfs.virginia.gov/statistics/index.cfm). These hits assisted 7,978 investigations, including 599 murders and over 1,100 sex crimes. *Id.* Of these hits, 755 were obtained from the Arrestee Database, with 115 of those associated with sexual assault cases. *Id.*

Arrestee DNA can catch repeat offenders before they strike again. Seventy percent of America’s crime is committed by only six percent of its

criminals. See James E. Hooper, *Bright Lines, Dark Deeds: Counting Convictions Under the Armed Career Criminal Act*, 89 Mich. L. Rev. 1951, 1951 n.3 (1991). From 1990-2002, 56% of violent offenders had prior convictions. U.S. Dep't of Justice, Bureau of Justice Statistics, *Violent Felons In Large Urban Counties* 1 (2006) (bjs.ojp.usdoj.gov/content/pub/pdf/vfluc.pdf.) And this does not include the many crimes that are never resolved. Studies show that for every burglary conviction obtained through DNA matches, 7.4 additional crimes are avoided. John K. Roman, *et al.*, *The DNA Field Experiment: Cost-Effectiveness Analysis of the Use of DNA in the Investigation of High-Volume Crimes* 13 (Urban Inst. Justice Pol'y Ctr. 2008). Some serial burglars are individually responsible for more than 200 crimes a year. J.M. Chaiken *et al.*, *Varieties of Criminal Behavior* 44 (1982). Sexual assault offenders commit an average of eight sexual assaults for every one detected. A. Nicholas Groth, *et al.*, *Undetected Recidivism Among Rapists and Child Molesters*, 28 *Crime & Delinquency* 450-458 (1982).

Moreover, arrestees are far more likely than the general public to be recidivists. Approximately 77% of arrestees have prior arrests, 69% have multiple prior arrests and 61% have at least one prior felony conviction. See *Felony Defendants in Large Urban Counties*, *supra* at 4, 5. By contrast, only about 6.5% of the U.S. population has ever had a felony conviction. See Joan Petersilia, *When Prisoners Come Home* 215 (2003) (data as of 2002).

These general statistics are borne out by individual case profiles. In 1987, Chester Turner was arrested for assault in California, but freed due to lack of evidence. At that time, California law did not

require that his DNA profile be taken on arrest. Turner continued to terrorize a Los Angeles community and was arrested nineteen more times before being convicted of rape in 2002. *See Haskell*, 669 F.3d at 1065. Only then was his DNA profile taken, and it matched evidence found on twelve rape and murder victims, the first murdered only two months after his 1987 arrest. *See* Andrew Blankstein, *et al.*, *DNA Analysis Links Inmate to 12 Slayings*, L.A. Times, Oct. 23, 2004, at A1; *see also* 151 Cong. Rec. S9528 (July 29, 2005) (Sen. Kyl). Those crimes could have been prevented had Turner's DNA profile been taken upon his initial arrest, rather than only after a conviction. *See Haskell*, 669 F.3d at 1065.

In Texas, Christopher Dye raped three women before being arrested in 1993 for burglary. Unaware he was a serial rapist, authorities released him on bail. Over the next six months, Dye raped four more women before being arrested for burglary. After two months in jail, he raped seven more women before finally being caught. Testing Dye upon his first burglary arrest could have led to a DNA match from his first three crimes, and prevented eleven others. *See* Laylan Copelin, *Texas Legislature Expands Use of DNA Testing*, Cox News Service (June 8, 2001).³

³ *See also Chicago Study on Preventable Crimes* (www.dnaresource.com/documents/ChicagoPreventableCrimes-Final.pdf); Maryland Criminal Justice Info. Sys., *Maryland Study on Preventable Crimes* (www.denverda.org/DNA_Documents/MarylandDNAarrestestudy.pdf); Denver DA, *Denver's Study on Preventable Crimes* (www.denverda.org/DNA_Documents/Arrestee_Database/Denver%20Preventable%20Crime%20Study1.pdf) (studies from Illinois, Maryland and Colorado on repeat offenders identifiable by earlier DNA testing).

In California, “[l]aw enforcement officials already have used California’s expanded database to solve numerous past crimes.” *Haskell*, 669 F.3d at 1064. Only ten months after California’s arrestee DNA identification law took effect, felony arrestee DNA samples had aided California police in 291 investigations. *Id.* For example, a man arrested for drug possession in 2009 was identified as the person who had murdered an 80-year-old woman 20 years earlier. *Id.* And another man arrested for assault in 2009 was identified as the perpetrator of a sexual assault and robbery only six months earlier. *Id.*

Mr. King’s case vividly demonstrates not only the substantial public safety benefits of arrestee DNA identification but also the serious adverse consequences of invalidating this new technological advance. Mr. King was arrested in 2009 for assault and identified as the man who had viciously raped a 53-year-old woman at gunpoint six years earlier after breaking into her house. He had discarded his DNA at the earlier crime scene (through his semen), and the DNA profile obtained after his later arrest for the unrelated assault confirmed his identity. Yet the Maryland Court of Appeals reversed his rape conviction, thereby letting a proven recidivist back onto the street to potentially victimize other women.

Moreover, DNA identification upon arrest not only catches the guilty, but can exonerate the innocent. The Chester Turner story is made even worse by the fact that another man, a mentally disabled janitor named David Jones, was wrongfully convicted of three of Turner’s murders based on blood-typing evidence and served eleven years in prison for crimes he did not commit. *See id.* at 1065; Blankstein, *supra.* Had Turner’s DNA been sampled upon his

first arrest, this wrongful conviction likely never would have occurred. See *Haskell*, 669 F.3d at 1065 (“Had the 2004 Amendment been in effect in 1995, it is likely that Jones never would have been imprisoned because police would have had access to Turner’s DNA profile.”). Likewise, an arrestee DNA match obtained under Katie’s Law both solved the murder of an 11-year-old New Mexico girl and exonerated a mentally challenged man who had wrongfully confessed to the crime and was jailed for two years. See *Man Who Killed 11-Year-Old Girl Sentenced to 59 Years in Prison* (Nov. 22, 2011) (www.kob.com/article/stories/S2383395.shtml).

DNA identification also helps reduce invasions of privacy resulting from inefficiency, inaccuracy or bias in law enforcement. Through this powerful technology, prosecutions are not left to the memory of witnesses or the discretion of law enforcement officers and police are led immediately to the right suspect, reducing the need for intrusive investigations of the innocent and eliminating racial profiling or other biases that might otherwise creep into investigations. Moreover, unlike fingerprints, DNA profiles are stored as numeric files without any personal information or criminal background.

As Chief Justice Roberts recognized in issuing a stay, the decision below threatens serious harm to the public if not reversed. Simply put, if DNA testing of arrestees is prohibited, innocent people will die who would otherwise be saved, and preventable harm will befall many others. We will never know the exact number, but if even a single life is lost by not allowing law enforcement to employ this simple tool to identify recidivists before they strike again, that is one life too many. If there were

real privacy interests at stake, perhaps these dire consequences would have to be tolerated. But as next shown, there are no such interests. Just as with traditional fingerprinting and other forms of identification, no arrestee has a protected interest in concealing his identity so that nobody can ever link him to crime scene evidence.

II. ARRESTEES HAVE NO CONSTITUTIONAL RIGHT TO HIDE IDENTIFYING INFORMATION.

As the lower courts have recognized, whether DNA identification of arrestees is “reasonable” under the Fourth Amendment is decided under a totality of the circumstances test, taken from this Court’s precedents, that balances the government’s interests against any intrusion on the arrestee’s legitimate privacy interests. *See, e.g., Samson v. California*, 547 U.S. 843, 848 (2006); *King*, 425 Md. at 561; *Mario W.*, 285 P.3d at 481; *Haskell*, 669 F.3d at 1053-54; *Mitchell*, 652 F.3d at 403. In applying that test, however, the court below overvalued the interests of arrestees and undervalued those of law enforcement and the potential victims of recidivist criminals.

A. Arrestees Have No Privacy Interests In Shielding Identifying Information, Whether Traditional Fingerprints Or DNA Profiles.

Arrestees, who have lawfully been detained upon an officer’s finding of probable cause that they have committed crimes, have lesser privacy interests than the general public and those privacy interests do not include shielding their identifying information. *See, e.g., Mitchell*, 652 F.3d at 412; *Jones v. Murray*, 962

F.2d 302, 306 (4th Cir. 1992) (“when a suspect is arrested upon probable cause, his identification becomes a matter of legitimate state interest and he can hardly claim privacy in it”). As explained in the petition, DNA profiling reveals only identifying information: thirteen otherwise meaningless markers that were deliberately chosen because they have no known correlation with any physical traits. *See* Pet. 15-17.

In allowing arrestees to shield that information, the court below adopted a mistaken understanding of what it means to “identify” someone. In its view, the government’s legitimate interest in knowing an arrestee’s identity is limited to knowing that person’s name. Thus, if the State can discern an arrestee’s name through other means, such as traditional fingerprinting, it has no need to employ DNA identification and the Fourth Amendment prohibits it from doing so. The court invalidated Maryland’s law because the State had “no evidence that it had any problems whatsoever identifying accurately King through traditional booking routines.” 425 Md. at 599. King had not “presented false identification when arrested or had altered his fingerprints or appearance in any way that might increase the State’s legitimate interest in requiring an additional form of identification to be certain who it had arrested,” and the court refused to allow DNA identification “without a showing that accurate identification was not possible using ‘traditional’ methods.” *Id.* at 599, 600. And because the court believed the government’s interest stops at learning a person’s name, law enforcement has no ability to use DNA profiling for “investigative” purposes such as matching it to crime scene evidence. *Id.* at 601

(“the State may secure the use of DNA samples, without a warrant under the Act, as a means to identify an arrestee, but not for investigatory purposes”).

That reasoning is flawed. Identification means more than just knowing a person’s name. “Identity” is simply “the condition of being the same with something described, claimed, or asserted * * *.” *Haskell*, 669 F.3d at 1063 (quoting Webster’s Third New International Dictionary 1123 (2002)). Names are one kind of identifying information, but they are far from the only kind. Fingerprints are another kind: they verify that an arrestee is the person with a particular set of unique fingerprints. Thus, the government always takes fingerprints from arrestees even when it already knows their names through other means. Indeed, fingerprinting does not reveal a name; at most, it associates a name learned through other means if a person was ever fingerprinted before. Fingerprinting is instead used largely to ascertain if identifying information is connected with other records, and the fingerprint record is placed in a database to enable future comparisons. This process invades no legitimate privacy interests because only identifying information is obtained, which no arrestee ever has a legitimate right to conceal, regardless of whether the government already has other such information.

The analysis is no different with DNA identification. “The collection and use of DNA for identification purposes is substantially identical to a law enforcement officer obtaining an arrestee’s fingerprints to determine whether he is implicated in another crime.” *Haskell*, 669 F.3d at 1063 (citation omitted). Traditional fingerprinting identifies a person by a

particular set of lines on his fingers. Photography identifies a person by a particular set of facial characteristics. Production of a driver's license identifies a person by the license information. Likewise, DNA profiling identifies a person by a particular set of otherwise meaningless DNA markers. The markers themselves *are* the person's identity, just as much as a name and birthday or other physical characteristics like facial features and fingerprints. This serves the same purposes as regular fingerprint identification. The only difference is that DNA identification can often do the job better. This case is a good example. Mr. King wore a mask during the rape and there was no fingerprint evidence. But he left his DNA, which could not be concealed.

If accepted, the flawed dichotomy between identification and investigative uses of identifying information would drastically disrupt law enforcement and endanger public safety. DNA profiles are used for investigatory purposes. But so are fingerprints and other forms of identification. If the reasoning of the court below were correct, "our entire criminal justice system would be upended." *Id.* at 1061. The entire system of fingerprinting would be invalid, because law enforcement could not require an arrestee to submit to fingerprinting if the records were ever to be used to link the person to a prior crime. *See id.* (if DNA profiles and fingerprint records "may only be used in connection with the crime for which probable cause was found," law enforcement "would be prevented from using basic investigative tools" and "could never be allowed to match crime scene fingerprints to data-bases of prints collected from past arrestees").

No arrestees ever have a legitimate interest in withholding their identifying information, whether fingerprints, names, birth dates, photographs or DNA profiles. Once that information is provided, it can be—and routinely is—used for other legitimate governmental interests, most notably to link the person to a prior crime. The actual evidence of criminal activity is not the subject of any search; it was voluntarily left by the perpetrator at the crime scene in the form of fingerprints or discarded bodily fluids. The fingerprint or DNA profile obtained upon the earlier or later arrest is simply used to identify the arrestee as that perpetrator. The government has a compelling interest in making that identification and thereby protecting the public from criminal activity.

**B. The Limited Analysis Performed For
DNA Identification Implicates No
Broader Privacy Concerns.**

Even though the only information ever obtained or used in DNA identification is the thirteen so-called “junk” markers, the court below held that an arrestee “ha[s] an expectation of privacy to be free from warrantless searches of his biological material and all of the information contained within that material” and that “we can not turn a blind eye to the vast genetic treasure map that remains in the DNA sample retained by the State.” *King*, 425 Md. at 595-96. That reasoning cannot withstand scrutiny.

There are stringent criminal penalties, in Maryland and elsewhere, prohibiting anyone from obtaining or using any genetic information of an arrestee beyond the identifying markers. *See* Pet. 16. And even though the FBI has been analyzing DNA

for over twenty years, “there has never been one noted case in which a lab employee has ever made an unauthorized disclosure of DNA information.” 155 Cong. Rec. S12905 (Dec. 10, 2009) (remarks of Sen. Kyl). As the Ninth Circuit has explained, legal decisions in this area cannot be based on “dramatic Hollywood fantasies” rather than “concretely particularized facts developed in the cauldron of the adversary process and reduced to an assessable record.” *United States v. Kincade*, 379 F.3d 813, 837-38 (9th Cir. 2004). *Accord Haskell*, 669 F.3d at 1062. Thus, if and when “some future program permits the parade of horrors the DNA Act’s opponents fear—unregulated disclosure of CODIS profiles to private parties, genetic discrimination, state-sponsored eugenics, * * * we have every confidence that courts will respond appropriately.” *Id.*

But it is also important to understand just how far-fetched these fantasies really are. The only information stored in CODIS consists of the thirteen junk markers, which are not associated with a name. *Kincade*, 379 F.3d at 818-19; H.R. Rep. No. 106-900, pt. 1 at 27. Thus, even if someone illegally gained access to CODIS, the only way to learn any genetic information about a specific arrestee would be to risk criminal penalties by (1) finding out where that person was arrested; (2) conspiring with the arresting agency to gain access to the physical sample taken at arrest; and (3) surreptitiously performing additional laboratory tests on that sample to generate additional data. There is no apparent reason why anyone would be motivated to obtain such information in the first place. And it is entirely unreasonable to think that someone would risk criminal sanctions to carry out such an elaborate plot,

which would be revealed as soon as the information were used. If someone truly had a nefarious reason to learn a person's genetic information, it would be far easier to test a strand of hair or another discarded sample.

It is irrelevant that the arresting agency retains the physical sample, which hypothetically could be re-analyzed to extract information beyond the identifying markers. Because the physical inconvenience of a buccal swab is *de minimis*, the only relevant "search" that even potentially implicates legitimate privacy interests is the analysis of the information contained in the sample obtained. *Cf. Mitchell*, 652 F.3d at 406 (holding that DNA identification "entails two separate searches": the physical collection of the sample and the analysis of the information). That search is plainly reasonable because the sample is analyzed only to determine the thirteen markers that are used and useful only for identification. If, hypothetically, the government were to perform yet another analysis to discover additional information that it does not yet have, additional privacy concerns might be implicated by that analysis. But such actions are strictly prohibited under pain of criminal penalty, have never occurred in this or any other case, and can be addressed on their own facts if they ever do occur. The government's continued retention of the sample is thus irrelevant where that access has yielded nothing other than purely identifying information.

Just as with fingerprints, DNA identification is *not* a search of private information for evidence of a crime. The physical evidence against which the comparison is made is not obtained through any new search but rather was abandoned at a crime scene,

and an arrestee has no legitimate interest in concealing that he is the person who has those identifying characteristics. No one can assert a Fourth Amendment right to the privacy of his criminal endeavors. *See Rakas v. Illinois*, 439 U.S. 128, 143-44 n.12 (1978) (“a ‘legitimate’ expectation of privacy, by definition, means more than a subjective expectation of not being discovered”). As with fingerprints, photographs, handwriting samples, and other forms of identification, using DNA identification to link a person with another event does not involve or justify any additional, more intrusive searches for evidence of wrongdoing.

It is therefore irrelevant whether the government offers released individuals a way to expunge their DNA records, or how easy any such process is. *Cf. King*, 435 Md. at 597 (“The expungement provisions of the Act recognize the importance of a conviction in altering the scope and reasonableness of the expectation of privacy.”). Although Maryland offers a relatively simple expungement procedure, that mechanism is immaterial to the constitutionality of DNA identification. Just as there is no constitutional right to expungement of fingerprint records lawfully obtained, there is no constitutional right to expungement of DNA profiles. Once identifying information is lawfully obtained, the Constitution does not place further restrictions on the government’s legitimate use of that information. The fact that Maryland, by providing an expungement procedure, has been *more* generous to arrestees than the Constitution requires casts no doubt on the validity of the initial collection of identifying information.

The Court should therefore grant certiorari and confirm that law enforcement can utilize this

effective identification technique. Future victims and their loved ones should not have to suffer and grieve because recidivist arrestees like Mr. King want to hide their identities. Arrestees' illegitimate interest in withholding their identifying information pales in comparison with the vital interests of these countless unknown future victims.

CONCLUSION

For the foregoing reasons and those in the petition, the petition should be granted and the judgment below reversed.

Respectfully submitted,
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