

No. 26-0950-cv

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SHAKIRA LESLIE, on behalf of themselves and all others similarly situated,
Plaintiff-Appellant,
SHAMILL BURGOS, on behalf of themselves and all others similarly situated,
Plaintiff,

v.

CITY OF NEW YORK; EDWARD A. CABAN, Police Commissioner
for the City of New York, in his official capacity; JEFFREY MADDREY, Chief of
Department for the New York City Police Department, in his official capacity;
JAMES ESSIG, Chief of Detectives for the New York City Police Department,
in his official capacity; BRIAN MCGEE, Deputy Chief in the Forensic
Investigations Division of the New York City Police Department, in his official
capacity; DR. JASON GRAHAM, Chief Medical Examiner for the City of New
York, in his official capacity,
Defendants-Appellees.

On Appeal from the United States District Court for the
Southern District of New York
1:22-cv-02305 (Hon. Judge Naomi Reice Buchwald)

**BRIEF OF AMICI CURIAE AMERICAN CIVIL LIBERTIES UNION,
NEW YORK CIVIL LIBERTIES UNION, AND CATO INSTITUTE IN
SUPPORT OF PLAINTIFF-APPELLANT AND REVERSAL**

Beth Haroules
Molly Biklen
New York Civil Liberties Union
Foundation
125 Broad Street, 19th Floor
New York, NY 10004
(212) 607-3300
bharoules@nyclu.org
mbiklen@nyclu.org

Counsel continues on next page

Vera Eidelman
Nathan Freed Wessler
Patrick Toomey
American Civil Liberties Union
Foundation
125 Broad Street, 18th Floor
New York, NY 10004
(212) 549-2500
veidelman@aclu.org
nwessler@aclu.org
ptoomey@aclu.org

Matthew P. Cavedon
Cato Institute
1000 Mass. Ave., N.W.
Washington, DC 20001
(706) 309-2859
mcavedon@cato.org

Counsel for Amici Curiae

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, amici curiae American Civil Liberties Union, New York Civil Liberties Union, and Cato Institute state that they do not have a parent corporation and that no publicly held corporation owns 10 percent or more of their stock.

Dated: July 30, 2026
New York, New York

/s/ Vera Eidelman
Vera Eidelman

Counsel for Amici Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
INTERESTS OF AMICI CURIAE.....	1
INTRODUCTION	2
ARGUMENT	4
I. THE SUSPECT INDEX IS A MASSIVE AND UNLAWFUL DNA DATABASE	4
A. The Suspect Index reflects egregious DNA collection practices.....	4
B. The Suspect Index violates, and is not cabined by, New York’s privacy protections for DNA	6
II. DNA CONTAINS AN INDIVIDUAL’S HIGHLY SENSITIVE AND PRIVATE INFORMATION	9
III. WARRANTLESS DNA COLLECTION, ANALYSIS, AND INDEXING VIOLATE THE FOURTH AMENDMENT	15
A. Collecting, analyzing, and indexing DNA constitute searches	15
B. Collecting, analyzing, and indexing DNA are separate Fourth Amendment events	19
C. Collecting DNA from discarded items does not negate the search.....	20
1. Individuals retain their privacy interest in the DNA they unavoidably, involuntarily shed.....	21
2. The Fourth Amendment does not allow the government to treat DNA like trash.....	23
D. Collecting, analyzing, and indexing DNA without a warrant is not “constitutionally permissible”	25
CONCLUSION	28

TABLE OF AUTHORITIES

Cases

<i>Arizona v. Gant</i> , 556 U.S. 332 (2009).....	20, 23, 25
<i>Birchfield v. North Dakota</i> , 579 U.S. 438 (2016).....	17
<i>California v. Greenwood</i> , 486 U.S. 35 (1988).....	23
<i>Carpenter v. United States</i> , 585 U.S. 296 (2018).....	<i>passim</i>
<i>Chatrie v. United States</i> , No. 25-112, 2026 WL 1855568 (U.S. June 29, 2026).....	<i>passim</i>
<i>Ferguson v. City of Charleston</i> , 532 U.S. 67 (2001).....	27
<i>Florida v. Royer</i> , 460 U.S. 491 (1983).....	25
<i>Illinois v. Lafayette</i> , 462 U.S. 640 (1983).....	26
<i>In re Francis O.</i> 170 N.Y.S.3d 51 (N.Y. App. Div. 2022).....	24
<i>Jancyn Manufacturing Corp. v. County of Suffolk</i> , 71 N.Y.2d 91 (N.Y. 1987).....	6
<i>Johnson v. VanderKooi</i> , 983 N.W.2d 779 (Mich. 2022).....	18
<i>Kyllo v. United States</i> , 533 U.S. 27 (2001).....	18
<i>Maryland v. King</i> , 569 U.S. 435 (2013).....	<i>passim</i>
<i>New York State Club Association v. City of New York</i> , 69 N.Y.2d 211 (N.Y. 1987).....	6
<i>Nicholas v. Goord</i> , 430 F.3d 652 (2d Cir. 2005)	1, 15

<i>People v. Adams</i> , 992 N.Y.S.2d 133 (N.Y. App. Div. 2014)	27
<i>People v. Flores</i> , 65 Misc. 3d 971 (N.Y. Sup. Ct., Bronx Cnty. 2019)	24
<i>People v. K.M.</i> , 54 Misc. 3d 825 (N.Y. Sup. Ct., Bronx Cnty. 2016)	6, 28
<i>Pretzantzin v. Holder</i> , 736 F.3d 641 (2d Cir. 2013)	18, 20
<i>Riley v. California</i> , 573 U.S. 373 (2014)	21, 23, 24
<i>Skinner v. Railway Labor Executives' Association</i> , 489 U.S. 602 (1989)	19
<i>State v. Mitcham</i> , 559 P.3d 1099 (Ariz. 2024)	1, 20, 27
<i>Stevens v. New York State Division of Criminal Justice Services</i> , 227 N.E.3d 1064 (N.Y. 2023)	1
<i>United States v. Amerson</i> , 483 F.3d 73 (2d Cir. 2007)	<i>passim</i>
<i>United States v. Davis</i> , 690 F.3d 226 (4th Cir. 2012)	20
<i>United States v. Hasbajrami</i> , 945 F.3d 641 (2d Cir. 2019)	19
<i>United States v. Lee</i> , 916 F.2d 814 (2d Cir. 1990)	23

Statutes

N.Y. Civ. Rights Law § 79-1	8, 9
N.Y. Comp. Codes R. & Regs. tit. 9, § 6192.3	14
N.Y. Exec. Law §§ 995–995-f	2, 8

Other Authorities

Anita M.Y. Goh & Edmond Chiu, <i>Huntington's Disease Research and Practice: Reflections on the Journey Made and Lessons Learned</i> , 23 Int'l Psychogeriatrics 851 (2011), https://perma.cc/VT2M-32QC	10
<i>Assembly Budget Report on Bills</i> , N.Y. Bill Jacket, L. 1999, Ch. 560,	

https://perma.cc/HF8D-4X34	8
<i>Attorney General G. Oliver Koppell's Memorandum for the Governor</i> , N.Y. Bill Jacket, L. 1994, Ch. 737, https://perma.cc/3FUS-VT46	7
Barkur S. Shastri, <i>SNPs: Impact on Gene Function and Phenotype</i> , 578 <i>Methods Molecular Biology</i> (2009), https://perma.cc/RQ2Y-XNJ6	11
Bridget F.B. Algee-Hewitt et al., <i>Individual Identifiability Predicts Population Identifiability in Forensic Microsatellite Markers</i> , 26 <i>Current Biology</i> 935 (2016), https://perma.cc/2R9F-4ZPC	12
<i>Compare DNA Tests</i> , 23andMe, https://perma.cc/6KP7-YQTX	10
Erin Murphy, <i>Inside the Cell: The Dark Side of Forensic DNA</i> (2015).....	11, 15
<i>Genetic Disorders</i> , U.S. Ctrs. for Disease Control & Prevention (May 15, 2024), https://perma.cc/V7XR-7EXM	9
George Joseph, <i>How Juveniles Get Caught Up in the NYPD's Vast DNA Dragnet</i> , <i>Gothamist</i> (Jan. 10, 2019), https://perma.cc/8H5S-TZW9	5
<i>Governor's Approval Memorandum</i> , N.Y. Bill Jacket, L. 1994, Ch. 737, https://perma.cc/3FUS-VT46	7
Jan Ransom & Ashley Southall, <i>'Race-Biased Dragnet': DNA from 360 Black Men Was Collected to Solve Vetrano Murder, Defense Lawyers Say</i> , <i>N.Y. Times</i> (Mar. 31, 2019), https://perma.cc/294W-QEEG	5
Jan Ransom & Ashley Southall, <i>NYPD Detectives Gave a Boy, 12, a Soda. He Landed in a DNA Database</i> , <i>N.Y. Times</i> (Aug. 15, 2019), https://perma.cc/XJ3N-VMZG	5
Jennifer Wilson, <i>The Family Fallout of DNA Surprises</i> , <i>The New Yorker</i> (Aug. 18, 2025), https://perma.cc/627J-S75C	10
<i>Letter from Maureen E. Casey, Couns., to Hon. Michael C. Finnegan, Couns. to the Governor</i> (July 8, 1996), N.Y. Bill Jacket, L. 1996, Ch. 497, https://perma.cc/BM5Y-7VBD	9
Mayra M. Bañuelos et al., <i>Associations Between Forensic Loci and Expression Levels of Neighboring Genes May Compromise Medical Privacy</i> , <i>Proce. of the Nat'l Acad. of Scis.</i> , Sept. 27, 2022, https://perma.cc/K3ZZ-TX8W	12, 13, 14
Michael D. Edge et al., <i>Linkage Disequilibrium Matches Forensic Genetic Records to Disjoint Genomic Marker Sets</i> , 114 <i>Proce. of the Nat'l Acad. of Scis.</i> 5671 (2017), https://perma.cc/BJ88-B2FZ	13
Nicole Wyner et al., <i>Forensic Autosomal Short Tandem Repeats and Their Potential Association with Phenotype</i> , <i>Frontiers in Genetics</i> , Aug. 6,	

2020, https://perma.cc/RA2X-TFQJ	13
OCME Department of Forensic Biology, <i>Local DNA Index System (LDIS) Statistics</i> , https://www.nyc.gov/site/ocme/services/ldis-tally.page	5
<i>Parabon Snapshot Advanced DNA Analysis: Genetic Genealogy, Phenotyping, Ancestry & Kinship Analysis</i> , Parabon Nanolabs, https://perma.cc/Y6UH-295X	10
Rafil Kroll-Zaidi, <i>Your DNA Test Could Send a Relative to Jail</i> , N.Y. Times (Jan. 3, 2022), https://perma.cc/JQ84-3CWT	11
Shanni Davidowitz, <i>23andeveryone: Privacy Concerns with Law Enforcement’s Use of Genealogy Databases to Implicate Relatives in Criminal Investigations</i> , 85 Brook. L. Rev. 185 (2019).....	14
Sheldon Krinsky & Tania Simoncelli, <i>Genetic Justice: DNA Data Banks, Criminal Investigations, and Civil Liberties</i> 117 (2012).....	15
Stephen Mercer & Jessica Gabel, <i>Shadow Dwellers: The Underregulated World of State and Local DNA Databases</i> , 69 N.Y.U. Ann. Surv. Am. L. 639 (2014).....	14
<i>Ten-Day Bill Budget Report on Bills</i> , N.Y. Bill Jacket, L. 1994, Ch. 737, https://perma.cc/3FUS-VT46	7
Vivian Link et al., <i>Microsatellites Used in Forensics Are in Regions Enriched for Trait-Associated Variants</i> , iScience, Oct. 20, 2023, https://perma.cc/BDA9-K2GM	12, 13
<i>What Are Single Nucleotide Polymorphisms (SNPs)?</i> , Nat’l Libr. Med., https://perma.cc/HT9K-G2HB	10
<i>What Do the Dots and Lines on the Map Represent?</i> , Ancestry, https://perma.cc/WYT4-R8CD	10

INTERESTS OF AMICI CURIAE¹

The American Civil Liberties Union (“ACLU”) is a nonprofit, nonpartisan membership organization devoted to protecting civil rights and liberties, including the right to be free from unreasonable searches and seizures. The New York Civil Liberties Union (“NYCLU”) is the ACLU state affiliate. For decades, the ACLU and NYCLU have advocated for the constitutional right to privacy, including to ensure that it is not eroded by the advance of technology. *See, e.g., State v. Mitcham*, 559 P.3d 1099 (Ariz. 2024) (amicus challenging warrantless DNA searches); *Carpenter v. United States*, 585 U.S. 296 (2018) (counsel challenging warrantless acquisition of cell phone location information); *Stevens v. N.Y. State Div. of Crim. Just. Servs.*, 227 N.E.3d 1064 (N.Y. 2023) (amicus challenging familial DNA search regulations); *Nicholas v. Goord*, 430 F.3d 652 (2d Cir. 2005) (amicus considering constitutionality of state’s DNA databank).

The Cato Institute is a nonpartisan public policy research foundation founded in 1977 and dedicated to advancing the principles of individual liberty, free markets, and limited government. Cato’s Project on Criminal Justice was founded in 1999 and focuses on the scope of substantive criminal liability, the proper and effective

¹ Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), amici certify that no person or entity, other than amici, their members, or their counsel, made a monetary contribution to the preparation or submission of this brief or authored this brief in whole or in part. The parties have consented to the filing of this brief.

role of police in their communities, the protection of constitutional and statutory safeguards for criminal suspects and defendants, citizen participation in the criminal justice system, and accountability for law enforcement officers. Cato's interest in this case arises from its mission to support the rights that the Constitution guarantees to all citizens. It has a particular interest in this case as it concerns the continuing vitality of the Fourth Amendment and meaningful restraints on the exercise of government power.

INTRODUCTION

For more than a decade, New York City has been routinely amassing the DNA samples of New Yorkers, without their consent or any court involvement, for inclusion in the city's "Suspect Index," a rogue genetic database not authorized by law that now contains more than 34,000 profiles. Defendants regularly include people who, as here, were expressly *excluded* as suspects in a crime, as well as suspects never charged with a crime, arrestees never convicted of a crime, and exonerated or acquitted individuals.

The Suspect Index operates completely outside New York law. Executive Law § 995 authorizes New York's state DNA databank as the exclusive DNA index in New York. N.Y. Exec. Law § 995-c. And, even if it allowed city-level databanks, its restrictions would expressly prohibit the collection, analysis, and indexing of many of the samples harvested by Defendants. *Id.* § 995-c(9). As a result, no

regulations limit who can be subject to the DNA collection challenged here, when a sample can be extracted and analyzed, whose DNA can be added to the Suspect Index, when it must be destroyed, or even what the DNA can (and perhaps more importantly, cannot) be used for.

This is the first case in which this Court must confront the constitutionality of the collection, search, and indexing of DNA not authorized or regulated by any statute. And it presents this Court with the opportunity to protect New Yorkers' genetic privacy rights by holding that such practices require a warrant.

DNA contains incredibly private and sensitive information—an individual's ancestry, family relationships, propensities for medical conditions, and more. Combined with other public data, it can also expose previously unknown adoptions, misattributed paternity, or early mortality. Because DNA reveals so much about every individual, collecting, analyzing, and indexing it constitutes a search under the Fourth Amendment for which the government must obtain a warrant.

Defendants are wrong to claim that they can obtain the DNA all people inevitably, involuntarily discard on every item they touch or consume under the abandonment doctrine. Regardless of whether the government can seize discarded items without a warrant, it cannot extract DNA from them, create a DNA profile, and add the profile to a searchable database—each a Fourth Amendment event separate from the initial seizure—without constitutional safeguards. And the

rationale underlying warrantless searches of abandoned property—that individuals knowingly and voluntarily relinquish their privacy interest in that property—cannot extend to unavoidably, involuntarily shed DNA.

The district court’s conclusion that collecting, analyzing, and indexing DNA without a warrant is generally permissible under *Maryland v. King*, 569 U.S. 435 (2013), and *United States v. Amerson*, 483 F.3d 73 (2d Cir. 2007), is equally wrong. Those cases considered DNA collected pursuant to clear, detailed, discretion-minimizing statutes. As such, the Supreme Court and this Court held that the samples at issue were in the government’s “valid possession,” *see King*, 569 U.S. at 451, 464, and were not vulnerable to the whims of government abuse. Neither condition is satisfied here.

There is no limiting principle to Defendants’ position, or the district court’s ruling. Affirming would allow Defendants to continue expanding their DNA repository without constraint, leaving all New Yorkers at risk of having their genetic information surreptitiously harvested and searched. This Court should reverse.

ARGUMENT

I. THE SUSPECT INDEX IS A MASSIVE AND UNLAWFUL DNA DATABASE.

A. The Suspect Index reflects egregious DNA collection practices.

The Suspect Index currently contains more than 34,000 profiles and is maintained by the New York City Office of the Chief Medical Examiner

(“OCME”).² SPA-8.³ As noted by the district court, many of the samples come from people who have never been convicted of—or even charged with or suspected of a crime. SPA-5–6. Further the NYPD routinely collects DNA samples through ruses involving straws, bottles, or cigarettes, without the knowledge or consent of the searched individual and without a court order. SPA-5–6. The NYPD’s collection methodologies have also long been reported to be racially discriminatory.⁴

The NYPD harvests DNA not only from adults who are charged with crimes—it also surreptitiously takes DNA from those merely brought in for questioning, and even from children it tricks.⁵ Those samples are then processed into profiles and entered into the Suspect Index without individuals’ knowledge, much

² OCME characterizes 34,872 DNA profiles as searchable; more than 54,000 additional DNA profiles have been “reviewed for removal.” An additional 9,800 profiles have actually been removed. See OCME Dep’t of Forensic Biology, *Local DNA Index System (LDIS) Statistics*, <https://www.nyc.gov/site/ocme/services/ldis-tally.page>. See also Br. for Pl.-Appellant (“Leslie Br.”) at 11, Dkt. No. 46.1.

³ “SPA” references the Special Appendix filed by Leslie with the Memorandum of Law filed July 23, 2026, at Dkt. No. 46.1.

⁴ Jan Ransom & Ashley Southall, *‘Race-Biased Dragnet’: DNA from 360 Black Men Was Collected to Solve Vetrano Murder, Defense Lawyers Say*, N.Y. Times (Mar. 31, 2019), <https://perma.cc/294W-QEEG>.

⁵ The NYPD is notorious for including children’s DNA in its database. See, e.g. Jan Ransom & Ashley Southall, *NYPD Detectives Gave a Boy, 12, a Soda. He Landed in a DNA Database*, N.Y. Times (Aug. 15, 2019), <https://perma.cc/XJ3N-VMZG>; George Joseph, *How Juveniles Get Caught Up in the NYPD’s Vast DNA Dragnet*, Gothamist (Jan. 10, 2019), <https://perma.cc/8H5S-TZW9>.

less their consent. And, as discussed in more detail below, each of those samples could be searched or shared for any number of purposes because the Index exists entirely outside of New York law.

B. The Suspect Index violates, and is not cabined by, New York’s privacy protections for DNA.

The Suspect Index is unlawful under New York law. Through N.Y. Executive Law §§ 995–995-f (the “DNA Act”), New York established a closely monitored DNA database that “allows inclusion of a DNA profile into a wide-ranging database only after conviction.” *People v. K.M.*, 54 Misc. 3d 825, 830 (N.Y. Sup. Ct., Bronx Cnty. 2016). It is the exclusive statutory regime governing the testing and databanking of DNA samples in New York; it authorizes only the state databank; and it includes limitations on that databank designed to prevent government abuse. The Suspect Index ignores all of those limiting features. Therefore, it violates state preemption principles and is unlawful.⁶ *See N.Y. State Club Ass’n v. City of N.Y.*, 69 N.Y.2d 211, 217 (N.Y. 1987); *Jancyn Mfg. Corp. v. Cnty. of Suffolk*, 71 N.Y.2d 91, 96–97 (N.Y. 1987) (finding field preemption where local practices “would tend to inhibit the operation of the State’s general law and thereby thwart the operation of the State’s overriding policy concerns” (citations omitted)).

⁶ To the extent this Court should determine that there is an unsettled determinative issue of New York law, we urge the Court to certify the question to the New York Court of Appeals under Local Rule 27.2. Leslie Br. at 54.

The DNA Act reflects a careful set of compromises by the Legislature, designed to balance the privacy rights of the individual and the interests of law enforcement. When enacting it in 1994, as the field of forensic science was burgeoning, the Legislature articulated its desire for the new law to “safeguard [...] confidentiality and privacy”⁷ and to ensure “State oversight” of the forensic laboratories rapidly expanding statewide.⁸ Then-Attorney General G. Oliver Koppell affirmed that “this legislation will ensure that DNA samples are collected and analyzed so as to enhance law enforcement investigations *while not trampling on the rights of innocent individuals*” (emphasis added).⁹ Then-Governor Mario M. Cuomo approved the bill because it contained “specific proscriptions governing the State DNA identification index and use of DNA records,” and addressed “[c]oncerns regarding the lack of regulation of forensic services[.]”¹⁰

To guard against intrusive forensic investigations, the Legislature limited collection to persons convicted of serious crimes. Though the Legislature amended

⁷ *Ten-Day Bill Budget Report on Bills*, N.Y. Bill Jacket, L. 1994, Ch. 737, at 000010, <https://perma.cc/3FUS-VT46>.

⁸ *Id.* at 000008.

⁹ *Attorney General G. Oliver Koppell’s Memorandum for the Governor*, N.Y. Bill Jacket, L. 1994, Ch. 737, at 000012, <https://perma.cc/3FUS-VT46>.

¹⁰ *Governor’s Approval Memorandum*, N.Y. Bill Jacket, L. 1994, Ch. 737, at 000005-06, <https://perma.cc/3FUS-VT46>.

the Act in 1999 to expand the list of crimes, it kept the conviction requirement, noted that the change could compromise “an individual’s right to privacy,” and communicated its continued intent to protect New Yorkers’ privacy rights.¹¹ Notably, the Legislature *declined* to expand the Databank to include arrestees—one of the groups the City targets for the Suspect Index—and did not even consider those merely brought in for questioning. Leslie Br. 10.

In addition, to protect privacy rights, the statute makes the disclosure or use of “a DNA record[] or the results of a forensic DNA test or analysis” without authorization a felony. N.Y. Exec. Law § 995-f. And it explicitly provides for expungement after exoneration or pardon. *Id.* § 995-c(9).

The Legislature also made its intent to protect genetic privacy clear through Section 79-l of the New York Civil Rights Law. Passed shortly after the DNA Act, Section 79-l(2)(a) prohibits any genetic testing—including “DNA profile analysis”—without an individual’s “written informed consent.” N.Y. Civ. Rights Law § 79-l(1)(a), (2)(a). It also prohibits the dissemination or disclosure of test results without written informed consent and mandates that test samples be destroyed after testing. *Id.* § 79-l(2)(b)(7), (3)(a). The narrow exceptions include testing pursuant to the DNA Act—but, critically, not any other government

¹¹ See *Assembly Budget Report on Bills*, N.Y. Bill Jacket, L. 1999, Ch. 560, at 000004, <https://perma.cc/HF8D-4X34>.

databanking. *See id.* § 79-1(4)(b), (4)(c). The Department of Criminal Justice Services itself acknowledged the Legislature’s intent that DNA retrieved pursuant to the DNA Act constitute the “notabl[e] ... exception” to Section 79-1.¹² Section 79-1 thus reflects the Legislature’s express command that no nonconsensual genetic testing be conducted unless expressly permitted by law. That does not include collection or testing for inclusion in the Suspect Index.

II. DNA CONTAINS AN INDIVIDUAL’S HIGHLY SENSITIVE AND PRIVATE INFORMATION.

New York’s focus on DNA databanking’s inherent privacy risks—and the constitutional defects inherent in the Suspect Index—are grounded in the highly sensitive and private nature of DNA.

As early as 2007, this Court recognized “the vast amount of sensitive information that can be mined from a person’s DNA and the very strong privacy interests that all individuals have in this information.” *Amerson*, 483 F.3d at 85. Today, a DNA sample can reveal sensitive medical details, ancestry, and biological relationships. It can expose whether a person is likely to develop Alzheimer’s, cystic fibrosis, breast cancer, or Huntington’s disease.¹³ It can uncover hidden infidelities

¹² *Letter from Maureen E. Casey, Couns., to Hon. Michael C. Finnegan, Couns. to the Governor* (July 8, 1996), N.Y. Bill Jacket, L. 1996, Ch. 497, at 000016, <https://perma.cc/BM5Y-7VBD>.

¹³ *See, e.g., Genetic Disorders*, U.S. Ctrs. for Disease Control & Prevention (May 15, 2024), <https://perma.cc/V7XR-7EXM>; Anita M.Y. Goh & Edmond Chiu,

or adoptions.¹⁴ Private companies claim it can reveal eye, hair, and skin color;¹⁵ allergies;¹⁶ and the likely migration patterns of a person's ancestors.¹⁷ As science evolves, DNA in the government's possession will only reveal more personal information.

Two types of DNA analysis are widely available today. The first generates a single nucleotide polymorphism ("SNP") profile, encompassing millions of locations across the genome.¹⁸ SNPs can reveal "the diversity among individuals," ranging from "traits such as curly hair" to "differences in drug response" to propensity for "diseases such as diabetes, obesity, hypertension, and psychiatric

Huntington's Disease Research and Practice: Reflections on the Journey Made and Lessons Learned, 23 Int'l Psychogeriatrics 851, 853 (2011), <https://perma.cc/VT2M-32QC>.

¹⁴ See, e.g., Jennifer Wilson, *The Family Fallout of DNA Surprises*, The New Yorker (Aug. 18, 2025), <https://perma.cc/627J-S75C>.

¹⁵ See, e.g., *Parabon Snapshot Advanced DNA Analysis: Genetic Genealogy, Phenotyping, Ancestry & Kinship Analysis*, Parabon Nanolabs, <https://perma.cc/Y6UH-295X>.

¹⁶ *Compare DNA Tests*, 23andMe, <https://perma.cc/6KP7-YQTX>.

¹⁷ *What Do the Dots and Lines on the Map Represent?*, Ancestry, <https://perma.cc/WYT4-R8CD>.

¹⁸ *What Are Single Nucleotide Polymorphisms (SNPs)?*, Nat'l Libr. Med., <https://perma.cc/HT9K-G2HB>.

disorders.”¹⁹ Companies like 23andMe and Ancestry.com use SNP analysis. Law enforcement officers also increasingly use SNP profiles for forensic genetic genealogy (“FGG”) investigations, revealing a multitude of private information about individuals and their entire family tree.²⁰

The second type of DNA analysis—the one used here—measures how many times “short, tandem, repeat” (“STR”) sequences occur at designated locations (“loci”) on the genome.²¹ In 2007, this Court found that STR profiles were not “associated with any known physical or medical characteristics,” *Amerson*, 483 F.3d at 85 (footnote omitted); the Supreme Court came to a similar conclusion in 2013, *see King*, 569 U.S. at 464. But the evolution of science, technology, and investigative practice all undercut that conclusion today. *See id.* at 464–65 (acknowledging that

¹⁹ Barkur S. Shastry, *SNPs: Impact on Gene Function and Phenotype*, 578 *Methods Molecular Biology* 3 (2009), <https://perma.cc/RQ2Y-XNJ6>.

²⁰ In an FGG investigation, officers generate a SNP profile from crime scene DNA, upload that profile to a vast genetic database, typically identify a partial match belonging to a distant relative of the crime-scene contributor, and scour public records to create detailed family histories to identify biological suspects. *See, e.g.*, Rafil Kroll-Zaidi, *Your DNA Test Could Send a Relative to Jail*, N.Y. Times (Jan. 3, 2022), <https://perma.cc/JQ84-3CWT>.

²¹ *See* Erin Murphy, *Inside the Cell: The Dark Side of Forensic DNA* 7–8 (2015).

“science can always progress further” in ways that “present additional privacy concerns”); *Amerson*, 483 F.3d at 85 n.13 (similar).²²

As one recent study explained, many of the STR sequences set in the federal Combined DNA Index System (“CODIS”) “were identified in the 1990s,” “before the human genome was sequenced.”²³ When *King* was decided, researchers “scoured the literature and found no record of direct associations between the CODIS loci and any known phenotypes”—but “our knowledge of phenotypic associations has grown tremendously in the decade since.”²⁴

Up-to-date research shows that STR profiles are now associated with far more than identity, including physical, medical, and familial characteristics. In 2016, researchers were able to identify ancestry from STR profiles, used in turn to approximate physical appearance.²⁵ In 2017, STR profiles were shown to be linked

²² Even the number of loci now is greater than the thirteen at issue in *King* and *Amerson*. In 2017, the FBI added seven additional ones; Defendants use two loci beyond that. SPA-7.

²³ Mayra M. Bañuelos et al., *Associations Between Forensic Loci and Expression Levels of Neighboring Genes May Compromise Medical Privacy*, *Proce. of the Nat’l Acad. of Scis.*, Sept. 27, 2022, at 1, <https://perma.cc/K3ZZ-TX8W>.

²⁴ Vivian Link et al., *Microsatellites Used in Forensics Are in Regions Enriched for Trait-Associated Variants*, *iScience*, Oct. 20, 2023, at 1–2, <https://perma.cc/BDA9-K2GM>.

²⁵ Bridget F.B. Algee-Hewitt et al., *Individual Identifiability Predicts Population Identifiability in Forensic Microsatellite Markers*, 26 *Current Biology* 935, 939 (2016), <https://perma.cc/2R9F-4ZPC>.

to SNP profiles.²⁶ In 2020, a research survey found that 57 studies associated forensic STRs with 50 unique traits, including schizophrenia, Parkinson’s disease, and Down syndrome.²⁷ In 2022, a new study found “six significant correlations” through which “the CODIS genotype may be informative about . . . psychiatric conditions,” like depression and schizophrenia, and physical conditions, like “severe skin and platelet conditions” and epilepsy.²⁸ And in 2023, another group of researchers found that “the CODIS loci are remarkably rich in nearby variants with known phenotypic associations.”²⁹

The scientists discovering and documenting these advances have concluded that the “attempt to choose loci for CODIS that convey unusually small amounts of information about phenotypes [...] does not seem to have been successful.”³⁰ And they have warned that the “body of work showing that CODIS genotypes may contain more information than purely identity” is “growing,” “rais[ing] concerns

²⁶ Michael D. Edge et al., *Linkage Disequilibrium Matches Forensic Genetic Records to Disjoint Genomic Marker Sets*, 114 *Proce. of the Nat’l Acad. of Scis.* 5671, 5675 (2017), <https://perma.cc/BJ88-B2FZ>.

²⁷ Nicole Wyner et al., *Forensic Autosomal Short Tandem Repeats and Their Potential Association with Phenotype*, *Frontiers in Genetics*, Aug. 6, 2020, <https://perma.cc/RA2X-TFQJ>.

²⁸ Bañuelos, *supra* note 23 at 1, 7.

²⁹ Link, *supra* note 24, at 3.

³⁰ *Id.* at 6.

about the medical privacy of individuals whose CODIS profiles are seized, databased, and accessed, as well as the[ir] genetic relatives.”³¹

STR profiles are also sensitive because they are inherently relational. Police in many states, including New York, now use STR databases for “familial searches,” expressly looking not for an individual’s identity, but to discover biological relatives.³²

Meanwhile, leaps in technology have enabled police to extract and analyze DNA not from large amounts of blood,³³ but from extremely small quantities of biological material unavoidably shed on “a discarded cigarette butt, chewing gum, saliva on a straw, or sweat on a chair.”³⁴ People constantly shed skin, which includes

³¹ Bañuelos, *supra* note 28 at 7.

³² New York allows such searches in its state databank, subject to limiting restrictions. *See* N.Y. Comp. Codes R. & Regs. tit. 9, § 6192.3 (allowing familial searches only for violent, unsolved crimes after all other investigative leads are exhausted). Like the other restrictions described in Section I.B, these limitations do not govern the Suspect Index.

³³ Stephen Mercer & Jessica Gabel, *Shadow Dwellers: The Underregulated World of State and Local DNA Databases*, 69 N.Y.U. Ann. Surv. Am. L. 639, 646 (2014).

³⁴ *Id.*; *see also* Shanni Davidowitz, *23andeveryone: Privacy Concerns with Law Enforcement’s Use of Genealogy Databases to Implicate Relatives in Criminal Investigations*, 85 Brook. L. Rev. 185, 188 (2019) (“[N]ew techniques have [...] reduced the sample quantity necessary to develop a DNA profile.”).

DNA.³⁵ The average person loses 40 to 100 hairs daily.³⁶ And a single sneeze can spew about 3,000 cell-containing droplets.³⁷ With every lost hair, licked envelope, used cup, and drifting flake of dandruff, people unavoidably and involuntarily deposit a copy of their genetic blueprint.

That physical reality means that—absent this Court’s intervention—Defendants can continue to amass the DNA of every New Yorker, create profiles, and persistently search them all without consent, court involvement, or statutory guardrails.

III. WARRANTLESS DNA COLLECTION, ANALYSIS, AND INDEXING VIOLATE THE FOURTH AMENDMENT.

A. Collecting, analyzing, and indexing DNA constitute searches.

Because of the privacy invasions imposed by DNA collection and analysis, this Court held more than two decades ago that it was already “settled law” that both the collection and indexing of DNA “are subject to the strictures of the Fourth Amendment.” *Amerson*, 483 F.3d at 77. *See also Nicholas v. Goord*, 430 F.3d 652, 658 (2d Cir. 2005) (“extraction and analysis [. . .] for DNA-indexing purposes

³⁵ *See* Murphy, *supra* note 21, at 5.

³⁶ Sheldon Krimsky & Tania Simoncelli, *Genetic Justice: DNA Data Banks, Criminal Investigations, and Civil Liberties* 117 (2012).

³⁷ *Id.*

constitute[] a search”). Supreme Court caselaw in the decades since confirms this. *See Carpenter v. United States*, 585 U.S. 296, 311 (2018) (finding reasonable expectation of privacy in information that reveals “familial . . . and sexual associations” (citation omitted)); *cf. King*, 569 U.S. at 448 (relying on a bodily intrusion rationale to hold that the creation of a DNA profile is a search); *id.* at 481 (Scalia, J., dissenting) (noting “vast (and scary) scope” of information revealed by DNA).

Contrary to the district court’s contention below, SPA-22–25, this holds regardless of the government’s purported use of the DNA, or what information the police choose to focus on. “[W]e have never understood Fourth Amendment protections as kicking in only once an intrusion ‘goes too far.’” *Chatrie v. United States*, No. 25-112, 2026 WL 1855568, at *13 (U.S. June 29, 2026) (citation omitted). “Where the Fourth Amendment applies, it applies—regardless of the quality or quantity of information the government obtains.” *Id.* (citation omitted).

This Court has already held as much with respect to DNA, subjecting sample collection and profiling to Fourth Amendment scrutiny precisely because of the “vast amount of sensitive information that *can* be mined from a person’s DNA.” *Amerson*, 483 F.3d at 85 (emphasis added). The Supreme Court has done the same in the years since *King*. In *Birchfield v. North Dakota*, the Supreme Court distinguished breathalyzers—which it held “do[] not implicate significant privacy

concerns”—from “the sample of cells collected by the swab” in *King* precisely because the DNA collection process “put into the possession of law enforcement authorities a sample from which a wealth of additional, highly personal information *could potentially* be obtained,” notwithstanding the fact that “law at issue” restricted the sample’s use to “identification” only. 579 U.S. 438, 462–63 (2016) (emphasis added) (alteration and citation omitted).

Indeed, the Supreme Court has repeatedly made clear that, particularly where new technologies are involved, what matters is what law enforcement *can* do with the information it collects—and what it *could* obtain from the category of information, even if it doesn’t in any particular case. “Whether something is a search does not depend on what it finds.” *Chatrle*, 2026 WL 1855568, at *14. For example, in *Chatrle*, the Court rejected the government’s argument that observing only two hours’ worth of location information negated any Fourth Amendment search. If “officials can select the []limited set of materials they want from an all-encompassing [source],” whatever “bounds [they choose to impose] on the data actually acquired do little to address the Fourth Amendment’s concern about a too permeating police surveillance.” *Id.* at *13 (citation omitted). That the government may *choose* to uncover only identity does not change the fact that the DNA sample in its possession holds far more information.

Similarly, in *Carpenter*, though law enforcement relied on only 16 location data points at trial, the Supreme Court found the full 127 days of data the government obtained without a warrant relevant in holding the search unconstitutional. 585 U.S. at 302, 311. And in *Kyllo v. United States*, though officers used a thermal imaging device only to expose heat from marijuana grow lamps in a garage, the Court took account of the technology’s ability to expose more “intimate” details, such as when “each night the lady of the house takes her daily . . . bath.” 533 U.S. 27, 38 (2001).

Moreover, even if the details revealed by an STR profile, rather than a DNA sample, were the full extent of the inquiry, the government “is wrong about the incapacity of [STRs] to reveal private matters.” *See Chatrie*, 2026 WL 1855568, at *12. As detailed above, today, STR profiles reveal private medical and familial information beyond an individual’s identity. And, even if that were not the case, the use of technology to expose identity intrudes on a reasonable expectation of privacy. *See Amerson*, 483 F.3d at 86 (refusing to “hold that a probationer has *no* expectation of privacy in his or her identity”); *Pretzantzin v. Holder*, 736 F.3d 641, 648–50 (2d Cir. 2013) (recognizing that “controlling precedent mandat[es] the suppression” of some “identity-related evidence,” such as DNA and fingerprints). *Cf. Johnson v. VanderKooi*, 983 N.W.2d 779, 795–98 (Mich. 2022) (Welch, J., concurring) (recognizing that people have a reasonable expectation of privacy in identifying

information from fingerprints that is “neither readily observable nor even very useful” without “technical expertise” or “advanced software”).

B. Collecting, analyzing, and indexing DNA are separate Fourth Amendment events.

Critically, extracting DNA from a physical item, analyzing that DNA, and indexing the resulting profile in a database each constitute a separate Fourth Amendment search. In the Supreme Court’s words, “it is obvious that [the] physical intrusion” involved in collecting biological material constitutes a search, and that “[t]he ensuing chemical analysis of the sample to obtain physiological data is a further invasion of the tested [individual’s] privacy interests.” *Skinner v. Ry. Lab. Execs.’ Ass’n*, 489 U.S. 602, 616 (1989). The “collection and subsequent analysis of . . . biological samples must be deemed [separate] Fourth Amendment searches.” *Id.* at 618.

This Court has already recognized this requirement for DNA, holding that the “second [...] invasion of privacy occasioned by [...] the analysis and maintenance of offenders’ information in CODIS” must be assessed separately from that of the initial sample collection. *Amerson*, 483 F.3d at 84–85 (alterations and citation omitted). Indeed, the second privacy invasion is “potentially much more serious,” both because of the “analysis” of physiological data, but also because that information is then “maint[ained]” in a government database. *Id.* See also *United States v. Hasbajrami*, 945 F.3d 641, 670 (2d Cir. 2019) (“[Q]uerying . . . stored data

does have important Fourth Amendment implications, and those implications counsel in favor of considering querying a separate Fourth Amendment event.”³⁸

Accordingly, the practices challenged here require a warrant. “[I]dentity-related evidence,” including DNA, cannot be searched or seized absent a warrant or an “exception to the . . . warrant requirement.” *Pretzantzin*, 736 F.3d at 648–50. *See also Amerson*, 483 F.3d at 77 (similar); *Arizona v. Gant*, 556 U.S. 332, 338 (2009) (warrantless searches are “*per se* unreasonable under the Fourth Amendment”).

C. Collecting DNA from discarded items does not negate the search.

Defendants argue that, because they collected Leslie’s DNA from a disposable cup, no search occurred. Leslie drank from a government-provided cup after being held in jail for approximately seven hours, initially refusing, and only relenting once a detective told her that “it would be some time before she had another opportunity to drink”; after she took a sip, he “told her to keep drinking.” SPA-10. Defendants contend that, by failing to then take the cup with her, Leslie abandoned any privacy interest in her DNA, obviating the warrant requirement. The court below agreed, but

³⁸ Other courts agree. *See United States v. Davis*, 690 F.3d 226, 246 (4th Cir. 2012) (“the creation of a DNA profile result[s] in a sufficiently separate invasion of privacy [from the DNA collection] that [it] must be considered a separate search”); *State v. Mitcham*, 559 P.3d 1099, 1104–05 (Ariz. 2024) (“physically collect[ing a] buccal sample” and “process[ing] it to extract a DNA profile” should each be “addressed [...] separately”—“particularly” because the profiling “involves the extraction (and subsequent publication to law enforcement [...]) of [...] genetic markers” (citation omitted)).

for a slightly different reason: that, “like all individuals who inevitably shed DNA in everyday activities, [Leslie] did not assert a privacy interest” in her DNA. SPA-36. Both contentions are wrong.

1. Individuals retain their privacy interest in the DNA they unavoidably, involuntarily shed.

Contrary to the district court’s conclusion, the fact that people shed DNA constantly, without any knowledge or volition, *see supra* Section II, is reason to *protect* genetic privacy, not deny it. As the Supreme Court explained in *Carpenter*, that information is subject to “inescapable and automatic . . . collection . . . does not make it any less deserving of Fourth Amendment protection.” 585 U.S. at 320. There, the Supreme Court held that individuals retain their expectation of privacy in location information they regularly share with their cellular service providers because it “is not truly ‘shared’ as one normally understands the term.” *Id.* at 315. No volition is involved because cell phones “are ‘such a pervasive and insistent part of daily life’ that carrying one is indispensable to participation in modern society,” and, once a person carries a cell phone, location information is logged “by dint of its operation, without any affirmative act on the part of the user.” *Id.* (quoting *Riley v. California*, 573 U.S. 373, 385 (2014)). *See also Chatrie*, 2026 WL 1855568, at *15 (holding even location information shared with a private company after affirmative opt-in is protected by the Fourth Amendment).

That logic applies with even more force to DNA. “[T]here is no way to avoid leaving behind a trail” of DNA, and “[a]s a result, in no meaningful sense does the [individual] voluntarily ‘assume[] the risk’ of turning over a comprehensive dossier” of genetic information. *See Carpenter*, 585 U.S. at 315 (last alteration in original).

If the district court were correct, no one would have any genetic privacy at all. To even try, people would have to abandon the most basic aspects of everyday life. They would have to hold onto every item they touch whenever they leave the house—and then incinerate it, *and* all their residential trash, rather than putting it out for collection. They would have to scrub the restaurant saltshaker, the pen used to sign a form, and every other item they touch. Each person would have to carry a cordless vacuum cleaner to capture any skin cells or hairs shed throughout the day. They would have to wear full-body protective suits, hair coverings, gloves, and respirators.

Society simply does not expect people to take such measures to avoid a government agent seizing and searching their genetic information. As the Supreme Court has repeatedly made clear, the Fourth Amendment does not require people to take extraordinary measures to guard against invasive modern surveillance. *See Chatrue*, 2026 WL 1855568, at *16 (people need not avoid “sending an email on Gmail, uploading a photo to Google Photos, or adding a calendar entry to Google

Calendar” to enjoy Fourth Amendment protections); *Carpenter*, 585 U.S. at 315 (people need not “disconnect[] the[ir] phone” to avoid location tracking).

2. The Fourth Amendment does not allow the government to treat DNA like trash.

Defendants’ claim that the DNA collection at issue here is justified by the abandonment doctrine is flawed for the same reason. Older Fourth Amendment doctrines cannot be extended to new technologies that expose previously unavailable information if the extension would “untether the rule from the justifications underlying” it. *Riley*, 573 U.S. at 386 (quoting *Gant*, 556 U.S. at 343). *See also Carpenter*, 585 U.S. at 309 (considering whether the “logic [of the third-party doctrine] extends to the qualitatively different category of” data exposed by new technology).

Yet applying the abandonment principle to unavoidably shed DNA would do exactly that. That principle derives from cases holding that people have no reasonable expectation of privacy in items they knowingly and voluntarily discard. *See, e.g., California v. Greenwood*, 486 U.S. 35, 40–41 (1988) (no expectation of privacy in trash left on the curb given the “common knowledge” that it is “readily accessible to [...] snoops,” and because it was left “for the express purpose of conveying it to a third party (footnote omitted)). “[W]hether there has been an abandonment [depends] on the intent of the person who is purported to have abandoned the property.” *United States v. Lee*, 916 F.2d 814, 818 (2d Cir. 1990)

(citation omitted). The intent to abandon is entirely lacking for the DNA people inevitably, unavoidably leave in their wake.³⁹

Extending abandonment cases to cover DNA would also ignore the second “ax[is]” along which DNA is “qualitatively different” from items historically subjected to the doctrine: DNA is “incomparably revealing.” *See Chatrie*, 2026 WL 1855568, at *15 (citation omitted). Of course, a physical item that a person knowingly and voluntarily abandons can sometimes reveal private information. But our DNA *always* contains the full scope of our genetic information. Equating the two “is like saying a ride on horseback is materially indistinguishable from a flight to the moon. Both are ways of getting from point A to B, but little else justifies lumping them together.” *Riley*, 573 U.S. at 393.

³⁹ Although in some circumstances it may be permissible for police to seize a discarded physical item pending a warrant to collect and analyze DNA deposited on it, given the custodial setting in this case, it is far from clear that the disposable cup itself was “abandoned.” *See, e.g., In re Francis O.* 170 N.Y.S.3d 51, 77 (N.Y. App. Div. 2022) (no abandonment where arrestee “was offered a drink of water in a disposable cup with the sole intention of collecting his DNA sample”); *People v. Flores*, 65 Misc. 3d 971, 975 (N.Y. Sup. Ct., Bronx Cnty. 2019) (“[W]here the captive defendant uses an item and the police harvest it specifically to obtain DNA,” the item “is not abandoned but rather seized.”).

D. Collecting, analyzing, and indexing DNA without a warrant is not “constitutionally permissible.”

Relying on *King* and *Amerson*, the district court separately held that “the creation and indexing of DNA profiles is, in general, constitutionally permissible” without a warrant. SPA-25. That is wrong twice over.

First, it ignores the Supreme Court’s repeated admonishment that any deviation from the warrant requirement must rest clearly on one of the “few,” “specifically established and well-delineated” exceptions, *Gant*, 556 U.S. at 338 (citation omitted), and in a way that is “limited in scope to that which is justified by the particular purposes served by the exception.” *Florida v. Royer*, 460 U.S. 491, 500 (1983). The district court failed to consider whether any specific exception to the warrant requirement applies here, instead lumping together *King*’s and *Amerson*’s distinct rationales. And, second, it misread both opinions in the process.

In *King*, the Supreme Court held that the particular program at issue—testing felony arrestees’ DNA pursuant to Maryland’s specific, detailed regulatory regime—was not subject to a warrant requirement for several reasons. Essential among them was “the standardized nature of the tests,” because “the permissible limits” of the tests “[we]re defined narrowly and specifically in the regulations that

authorize[d] them.” 569 U.S. at 448 (citation omitted).⁴⁰ Maryland’s regulations dictated who was subject to the DNA collection (individuals charged with a serious offense); when that sample would be extracted and analyzed (after arraignment by a judge); when it must be destroyed (if there is no conviction, the conviction is overturned, or the individual is pardoned); and what it could be used for (nothing beyond identification, including an explicit ban on familial searches). *Id.* at 443–44. Because this left the program administrators with “minimal discretion,” the Court concluded that “the search. . . falls within the category of cases [...] analyzed by [...] reasonableness, not individualized suspicion.” *Id.* at 448 (citations omitted).⁴¹

The rigors of the statute—which limited DNA collection to a narrow class of arrestees and imposed specific protections—were necessary for the warrantless search in *King* to be deemed reasonable.⁴² *See also State v. Mitcham*, 559 P.3d 1099,

⁴⁰ Moreover, the Court did so only after holding that arrestees for serious offenses had reduced privacy interests at booking. 569 U.S. at 462. As noted above, many samples for the Suspect Index are collected when an individual is not under arrest.

⁴¹ As reflected by the other rationales underlying *King*, this does not mean that a search is subject only to a reasonableness analysis any time it is governed by a discretion-minimizing statutory regime.

⁴² *King* also emphasized that the government’s interest in identification was specifically tied to “routine administrative procedure[s] at a police station house incident to booking and jailing the suspect.” 569 U.S. at 449 (quoting *Illinois v. Lafayette*, 462 U.S. 640, 643 (1983) (alteration in original)). In contrast, New York maintains its Suspect Index not to identify an individual or make routine booking or jailing decisions; it does so specifically to investigate other crimes. That, along with the distinctions from *Amerson* noted below, invalidates any argument that the

1106 (Ariz. 2024) (holding that where, “[u]nlike the situation in *King*,” police “did not extract [the defendant’s] DNA profile pursuant to statutory authority governing routing booking procedures intended to identify perpetrators,” the “warrantless search was unreasonable”); *People v. Adams*, 992 N.Y.S.2d 133, 133 (N.Y. App. Div. 2014) (holding that probation department taking a DNA sample without “any statutory or judicial authority” violated constitutional rights). Those restrictions are nowhere to be found here.

So, too, with *Amerson*. There, this Court subjected the federal government’s collection and indexing of probationers’ DNA to a special needs analysis “especially” and “[p]erhaps mo[st] importantly” because it was conducted pursuant to the Justice for All Act of 2004. 483 F.3d at 82. Because that Act required “all felons . . . to submit DNA samples, and . . . strictly circumscribed [the uses of the samples],” it left “no discretion for law enforcement personnel,” thereby “remov[ing] a significant reason for warrants—to provide a check on the arbitrary use of government power.” *Id.*

That justification is starkly lacking here. As detailed in Section I.B, no “regulations [...] authorize” the Suspect Index, much less define “the permissible

special-needs exception could apply. *Ferguson v. City of Charleston*, 532 U.S. 67, 81–86 (2001).

limits of [the] intrusion[] narrowly and specifically,” *see King*, 569 U.S. at 448, or “how [the government can] use the information collected,” *see Amerson*, 483 F.3d at 82 (footnote omitted). Indeed, the Suspect Index *violates* New York law. *See K.M.*, 54 Misc.3d at 831 (distinguishing *King* and granting a protective order prohibiting the NYPD from adding defendant’s DNA profile to the Suspect Index because the widespread availability of his DNA profile for matching in that database would run afoul of Executive Law § 995-c).

For that reason, neither *King*’s reasonableness analysis nor *Amerson*’s special needs analysis saves the Suspect Index. Instead, the threshold holdings of those cases—that DNA searches are subject to Fourth Amendment scrutiny—govern, and demand a warrant. Any other conclusion would ignore the “basic purpose” of the Fourth Amendment: to “secure the ‘privacies of life’ against the exercise of ‘arbitrary power.’” *Chatrue*, 2026 WL 1855568, at *8 (citations omitted).

CONCLUSION

For the reasons stated above, amici respectfully submit that the Court should reverse.

Dated: New York, New York
July 30, 2026

Respectfully submitted,

/s/ Vera Eidelman

Vera Eidelman
Nathan Freed Wessler
Patrick Toomey
American Civil Liberties Union
Foundation
125 Broad Street, 18th Floor
New York, NY 10004
(212) 549-2500
veidelman@aclu.org
nwessler@aclu.org
ptoomey@aclu.org

Beth Haroules
Molly Biklen
New York Civil Liberties Union
Foundation
125 Broad Street, 19th Floor
New York, NY 10004
(212) 607-3300
bharoules@nyclu.org
mbiklen@nyclu.org

Matthew P. Cavedon
Cato Institute
1000 Mass. Ave., N.W.
Washington, DC 20001
(706) 309-2859
mcavedon@cato.org

Counsel for Amici Curiae

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g), I certify that this Brief of Amici Curiae in Support of Plaintiff-Appellant and Reversal complies with the type-volume limitation, typeface requirements, and type style requirements of Federal Rule of Appellate Procedure 32(a)(5) and (6), and 29(5) because it contains 6468 words, excluding parts of the document exempted by Federal Rule of Appellate Procedure 32(f), and has been prepared in a proportionally spaced typeface, 14-point Times New Roman, using the word-processing system used to prepare the document.

Dated: July 30, 2026
New York, New York

/s/ Vera Eidelman
Vera Eidelman

Counsel for Amici Curiae

CERTIFICATE OF SERVICE

I hereby certify that on July 30, 2026, I electronically filed the foregoing document with the Clerk of the Court using the ACMS system, which will send notification of such filing to all counsel of record.

Dated: July 30, 2026
New York, New York

/s/ Vera Eidelman
Vera Eidelman

Counsel for Amici Curiae