No. 12-207

IN THE
Supreme Court of the United States

STATE OF MARYLAND,
Petitioner,

v.

ALONZO JAY KING, JR.,
Respondent.

On Writ of Certiorari to the
Court of Appeals of Maryland

BRIEF OF COUNCIL FOR RESPONSIBLE GENETICS AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENT

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INTEREST OF *AMICUS CURIAE*[1]

The Council for Responsible Genetics ("CRG") is a member-supported, independent 501(c)(3) organization that was founded in 1983 to examine the social, ethical, and environmental impacts of applied genetics. Working through the media and concerned citizens, CRG distributes accurate information and commentary and represents the public interest on emerging issues in biotechnology.

Among the first projects undertaken by CRG was the publication of *GeneWatch* magazine. From its inception, *GeneWatch* has filled the critical role of analyzing the rush of information and opinions resulting from the rapid growth in genetic research and technology. Applications of forensic DNA and the growth in forensic DNA databases have been core issues for CRG, and have led to *GeneWatch* dedicating several issues to forensic DNA. CRG is a founder of the Forensic Genetics Policy Initiative, an international collaboration of non-governmental organizations dedicated to building global civil society's capacities to (1) engage in policy-making processes related to the development of national and international DNA databases and cross-border sharing of forensic information, and (2) protect privacy and human rights by setting international standards for DNA databases. CRG is a recognized

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[1] The parties have consented to the filing of this brief. 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. No person other than *amicus curiae* or its counsel made a monetary contribution to its preparation or submission.

expert organization on forensic uses of DNA and has been active in local, national, and international debates on the use of such technologies for 30 years. In addition, CRG has sponsored national conferences on forensic DNA and its staff and Board have authored numerous books and articles on the subject, including the seminal book *Genetic Justice* co-authored by CRG Board Chair Professor Sheldon Krimsky, whose assistance was instrumental in the preparation of this brief, and former Board member Tania Simoncelli.

SUMMARY OF THE ARGUMENT

Maryland's DNA Collection Act is representative of a growing trend in which government collects DNA samples not just from those convicted of crimes, but from those who are merely arrested. Because only a fraction of those who are arrested are ultimately charged and convicted, however, this practice necessarily will permit the government to collect DNA from innocent people.

That the government would obtain DNA from any innocent person is disturbing, but the practice visits a special and severe harm upon minorities. Members of minority groups are arrested in disproportionate numbers, and a disproportionate percentage of innocent arrestees are therefore likely to be minorities. This brief seeks to bring to the Court's attention the wealth of social science evidence documenting the harms to minorities from this practice. In particular, innocent minority arrestees (and increasingly their blood relatives) are

especially likely to experience stigmatization and unwarranted law enforcement surveillance from being included in the DNA database.

First, it is indisputable that collecting DNA from arrestees likely will lead to a disproportionate impact on minorities. In general, minorities – especially young black men – are arrested at much higher rates than their white counterparts. Those disparities are particularly dramatic for certain offenses, like drug crimes, and they cannot be explained by looking at the rates of criminal activity between racial groups. Meanwhile, conviction rates are variable and often quite low, resulting in tens of thousands of people each year being arrested for – but not convicted of – a crime. Because of the disproportionality in arrest rates, those innocent arrestees who are subjected to DNA collection each year without a finding of guilt are likely to be disproportionately black or Hispanic. And a substantial number of those innocent arrestees will not have the knowledge, resources, or determination required to successfully navigate the onerous expungement procedures that most jurisdictions have implemented.

As a result, many DNA profiles of innocent minorities will be continually searched as part of law enforcement investigations that could include cold hit searches, familial searches, and DNA-based racial profiling. That heightened scrutiny by law enforcement not only will contribute to the further stigmatization of minorities in American society, but may also lead to false positive DNA matches, which in turn will subject innocent minorities to a greater risk of false incriminations and convictions. Those

troubling consequences can be mitigated by keeping innocent arrestees out of DNA databanks, a lesson that the United Kingdom finally has begun to learn after public resistance to and judicial scrutiny of broad, racially imbalanced DNA collection and retention policies.

ARGUMENT

I. Permitting DNA Collection From Arrestees Will Likely Result In DNA From A Disproportionate Number Of Innocent Minorities Being Included In Forensic Databases.

Maryland's DNA statute is part of an increasing trend in which jurisdictions collect DNA samples not just from those who are convicted of crimes, but from those who are merely arrested. These arrestee DNA statutes are likely to result in the collection of DNA from a greater proportion of innocent minorities in relation to their population. This is because minorities are arrested in disproportionate numbers, and thus make up a correspondingly disproportionate share of those who are ultimately not convicted. And contrary to the suggestion of Petitioner's *amici*, expungement provisions will not prevent this problem because they typically erect procedural hurdles that minorities, in particular, may not have the resources to overcome. The possibility of expungement also fails to erase the harms that DNA collection may cause prior to expungement, which also are likely to disproportionately impact minorities.

A. DNA Databases Contain A Disproportionate Number Of Profiles Of Innocent Minority Arrestees.

Since 2004, Congress has permitted arrestee DNA profiles to be uploaded to CODIS. *See* Justice for All Act of 2004, Pub. L. No. 108-405, § 203, 118 Stat. 2260. Today, some 28 states, including Maryland, and the federal government upload arrestee profiles for at least some offenses. And the number of arrestee profiles in CODIS has expanded from just 50,000 in 2006, to more than 1.1 million in 2012.

Two empirical consequences of the expansion of CODIS to arrestees are that (1) minorities make up a disproportionate share of the profiles because they are arrested at a higher frequency than whites for the same crimes, and (2) minorities make up a correspondingly disproportionate share of arrests that do not lead to a conviction. Thus, as we explain, jurisdictions that collect DNA from arrestees will end up collecting DNA from substantial numbers of minorities who are ultimately not convicted of a crime.

Arrest Rates. The higher rates of arrests for minorities are a well-documented and disturbing trend. For example, according to the Bureau of Justice Statistics, in 2010 blacks accounted for approximately 27% of adult arrests in the United States at a time when the adult black population was only 12% of the total adult population in the United States. *Compare* Bureau of Justice Statistics, U.S. Dep't of Justice, *Arrest Data Analysis Tool, Arrests*

by Race and Age in the U.S., 2010, http://tinyurl.com/BJSarrests (last visited Jan. 31, 2013) (select "National Estimates"; then select "Annual Tables"; then select "2010" and "Offense By Age and Race") (3.1 million black arrests out of 11.5 million total arrests), *with* U.S. Census Bureau, 2006-2010 American Community Survey Selected Population Tables: Sex by Age[2] (28.2 million African American adults) *and* U.S. Census Bureau, 2010 American Community Survey 1-Year Estimates: Sex by Age[3] (235.2 million total adults).

Data collected by the federal government about felony defendants suggests that racial disparities are particularly dramatic in certain counties.[4] For instance, in 2006, blacks made up 52% of the population of Shelby County, Tennessee, yet constituted a full 85% of felony defendants. *Compare* U.S. Census Bureau, 2006 American Community Survey, ACS Demographic and Housing Estimates: 2006, http://tinyurl.com/shelbycountydemographics, *with* Thomas H. Cohen & Tracey Kyckelhahn, Bureau of Justice Statistics, U.S. Dep't of Justice, *Felony Defendants in Large Urban Counties, 2006*, at 36 app. tbl. 18 (2010), http://tinyurl.com/BJScounties. Similarly, in Los Angeles County, California, the black population was approximately

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[2] *See* http://factfinder2.census.gov/bkmk/table/1.0/en/ACS/10_SF4/B01001//popgroup~005 (last visited Jan. 30, 2013).

[3] *See* http://factfinder2.census.gov/bkmk/table/1.0/en/ACS/10_1YR/B01001 (last visited Jan. 30, 2013).

[4] As explained further below, significant numbers of those arrested are never charged with or prosecuted for a crime, so the number of arrestees is actually substantially higher than the number of defendants. *See infra* pp. 10-13.

9.5%, while blacks made up 34% of the felony defendants. *Compare* U.S. Census Bureau, 2006 American Community Survey, ACS Demographic and Housing Estimates: 2006, http://tinyurl.com/lacountydemographics, *with* Cohen & Kyckelhahn, *supra*, at 36 app. tbl. 18. And in that same year, the Hispanic population of Maricopa County, Arizona was 30%, while Hispanics made up 39% of the felony defendant population. *Compare* U.S. Census Bureau, 2006 American Community Survey, ACS Demographic and Housing Estimates: 2006, http://tinyurl.com/maricopademographics, *with* Cohen & Kyckelhahn, *supra*, at 36 app. tbl. 18.

Maryland has proven no exception to this trend. In the three years since Maryland has begun collecting data about racial demographics of arrestees alongside DNA samples, blacks have consistently been approximately 60% of the total number of individuals arrested and charged with qualifying offenses, despite being only approximately 30% of the total population in the state of Maryland.[5]

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[5] Indeed, the Maryland legislature was not only aware of concerns about disproportionate arrest rates when it considered expanding DNA collection to include arrestees, but actually amended the statute to require reporting of racial demographics in connection with DNA collection. *See, e.g.*, Md. Code Ann., Pub. Safety § 2-513(b)(3); Md. Code Regs. 29.05.01.16(B)(3); Maryland Office of the Public Defender, Position on Proposed Legislation – SB 211 (Feb. 13, 2008) (on file with author) (stating that "since nonwhites are arrested at nearly three times the rate of whites, the resulting DNA database will perpetuate flaws that exist in the arrest practices of police departments"). As the statistics above demonstrate, those concerns were warranted.

Compare Forensic Sciences Division, Maryland State Police, Statewide DNA Database Report, 2011 Annual Report 7 (Apr. 2012), *with* U.S. Census Bureau, 2011 American Community Survey, ACS Demographic and Housing Estimates, http://tinyurl.com/ACSMDstatedemographics. In contrast, whites made up approximately 36% of arrested and charged individuals, while constituting 61% of the total population. *See id.*

Some crimes, most notably drug offenses, have particularly disproportionate minority arrest rates. *See, e.g.*, Troy Duster, *Social Issues Lurking in the Over-Representation of Young African American Men in the Expanding DNA Databases, in Against the Wall: Poor, Young, Black and Male* 182-83 & figs. 12.1, 12.2 (Elijah Anderson ed., 2008); Troy Duster, *Selective Arrests, an Ever-Expanding DNA Forensic Database, and the Specter of an Early-Twenty-First-Century Equivalent of Phrenology, in DNA and the Criminal Justice System* 315, 320 (David Lazer ed., 2004) ("*Selective Arrests*"). For example, one study found that "drug use data indicate that between 36 and 69 percent of those who use or abuse crack cocaine in Seattle are white, yet only 26.3 percent of those arrested for crack possession are white." Katherine Beckett et al., *Drug Use, Drug Possession Arrests and the Question of Race: Lessons from Seattle*, 52 Social Problems 419, 426-27 (2005); *cf.* Justice Policy Institute, Policy Report, *The Vortex: The Concentrated Racial Impact of Drug Imprisonment and the Characteristics of Punitive Counties* 7 (Dec. 2007), *available at* http://tinyurl.com/justicepolicyreport ("[I]n 2002, 24

percent of crack cocaine users were African American and 72 percent were white or Hispanic, yet more than 80 percent of defendants sentenced for crack cocaine offenses were African American."). Similarly, even though studies show white people use marijuana at a higher rate than blacks and Hispanics, marijuana possession arrests for black people are as much as eight times the arrest rate for white people, and the arrest rate of Hispanics is nearly three times that of whites. *See* Sheldon Krimsky & Tania Simoncelli, *Genetic Justice: DNA Data Banks, Criminal Investigations, and Civil Liberties* 254 (2011) (citing Harry G. Levine, et al., *Drug Arrests and DNA: Building Jim Crow's Database* (July 2008), *available at* http://tinyurl.com/levinedrugarrest (paper originally presented at the Forum on Racial Justice Impacts of Forensic DNA Databanks, New York University, June 19, 2008)); Harry G. Levine & Deborah Peterson Small, N.Y. Civil Liberties Union, *Marijuana Arrest Crusade: Racial Bias and Police Policy in New York City 1997 – 2007*, at 4, 14 (2008), *available at* http://tinyurl.com/NYCLUreport.

As with overall arrest rates, Maryland's drug arrest rates mirror national data. A 2003 study commissioned by Maryland's Legislative Black Caucus, for example, showed that while African Americans made up 28% of the population in Maryland, they represented 68% of those arrested for drug offenses and 90% of those incarcerated for those offenses. Vincent Schiraldi & Jason Ziedenberg,

Justice Policy Institute, *Race and Incarceration in Maryland* 12 (2003).

The issue of the extent to which these disproportionate arrest rates reflect discriminatory police tactics is a subject that cannot be fully treated in this brief. But what is clear is that as states broaden their DNA statutes to include more qualifying offenses, it likely will increase the disproportionate number of minorities already in DNA databases.[6]

Non-Conviction Rates. Many of those arrested, however, are never convicted, and because minorities are arrested at a higher rate, they also make up a disproportionately high percentage of those ultimately not convicted.

In 2009, the overall conviction rate for federal offenses averaged only 47%. *See* Mark Motivans, Bureau of Justice Statistics, U.S. Dep't of Justice,

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[6] Of the 28 states (plus the federal government) that collect DNA from arrestees, more than half already include *all* felonies in the list of qualifying offenses. *See* 42 U.S.C. § 14135a(a) (any felony); Ala. Code § 36-18-25(c)(1) (any felony or sexual offense); Alaska Stat. § 44.41.035(b)(6) (any felony or crime against a person); Cal. Penal Code §§ 296(a)(2), 296.1(a)(1) (any felony); Colo. Rev. Stat. Ann. § 16-23-103(1)(a) (any felony); Fla. Stat. Ann. § 943.325(2)(g)(2)(c) (any felony); Kan. Stat. Ann. § 21-2511(e)(2) (any felony); La. Rev. Stat. Ann. § 15:609(A)(1) (any felony); N.M. Stat. Ann. § 29-16-6(B) (any felony); N.D. Cent. Code § 31-13-03 (any felony); Ohio Rev. Code Ann. § 2901.07(B)(1) (any felony); S.D. Codified Laws §§ 23-5A-1(8), 23-5A-5.2 (any felony, crime of violence, or any sex offense); S.C. Code Ann. § 23-3-620(A) (any felony); Tex. Gov't Code Ann. § 411.1471 (any felony); Vt. Stat. Ann. tit. 20, § 1933(a)(2) (any felony).

Federal Justice Statistics, 2009, at 2 & tbl. 7 (2011), *available at* http://tinyurl.com/BJSfedstats2009 (183,986 arrests for federal offenses, but only 86,975 convictions in federal court). The picture is not much better when looking at state conviction rates. Although data collected by the Justice Department indicates that overall conviction rates for felony defendants in large urban counties have remained around 68% for the last several years, *see* Cohen & Kyckelhahn, *supra*, at 2, some offenses have a conviction rate as low as 16% (motor vehicle theft), 25% (aggravated assault), 44% (burglary), and 46% (robbery). *See* Bureau of Justice Statistics, U.S. Dep't of Justice, *State Court Sentencing of Convicted Felons, 2004 – Statistical Tables* tbl. 1.8, http://tinyurl.com/statefelonies (last visited Jan. 31, 2012); *King v. State*, 42 A.3d 549, 577-78 & n.32 (Md. Ct. App. 2012) (citing statistics).

Even at the highest rates of conviction, acquittal and dismissal of charges account for approximately 25% of the cases against felony defendants – meaning that almost a quarter of all felony defendants (and more, for some offenses) are released from the criminal justice system without a finding of guilt. *See, e.g.*, Cohen & Kyckelhahn, *supra*, at 11 tbl. 11; Criminal Justice Statistics Center, Cal. Dep't of Justice, *Crime in California, 2006*, at 50 tbl. 39 *available at* http://tinyurl.com/calcrime2006 (from 2001-2006, adult felony conviction rates in the state were approximately 69%, release, 3%; denied complaints, 13%; and dismissals or acquittals, 14%).

Moreover, a significant number of arrestees are released without ever being charged with any offense. In California, for instance, the number of individuals who were released without charges or complaints submitted ranged from 2.9% to 4.1% of the individuals arrested – between 7,698 and 11,248 individuals each year. *See* Criminal Justice Statistics Center, Cal. Dep't of Justice, *Crime in California, 2005*, at 148 tbl. 39, *available at* http://tinyurl.com/calcrime2005. The majority of states that collect DNA samples from arrestees do so at the time a suspect is booked and processed, guaranteeing that innocent people will have their DNA profiles included in DNA databases.[7] But given acquittal and dismissal-of-charges rates, even states (such as Maryland) that collect DNA samples only after a charging decision is made undoubtedly capture innocent arrestees in their nets.

In sum, non-conviction rates mean that a substantial number of individuals, including a disproportionate number of minorities, will have their DNA collected upon arrest even though they are not convicted for that crime. Imagine that a state has just introduced the collection of arrestee

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[7] In just a few states does the analysis of the sample and placement of a profile in the database occur after probable cause has been determined or the defendant is arraigned. *See* 730 ILCS 5/5-4-3(a-3.2) (after indictment or probable cause hearing); Md. Code Ann., Pub. Safety § 2-504(d)(1) (after arraignment); Minn. Stat. § 299C.105(1)(a)(1) (after probable cause determination); Va. Code Ann. § 19.2-310.2:1 (after probable cause determination); Vt. Stat. Ann. tit. 20, § 1933(a)(2) (after arraignment); *see also* N.C. Gen. Stat. § 15A-266.3A (probable cause hearing required if no arrest warrant).

DNA and has 100,000 arrestees in its first year. Assuming a 30% overall non-conviction rate (a conservative estimate based on the data above), the database will contain 30,000 non-offenders, of whom almost 8,400 will be black.[8] If the racial makeup of arrestees remains constant over time, then over a period of years innocent blacks will represent 28% of the non-offender profiles in the database despite constituting only 12% of the overall population.

This disproportionate effect on innocent minorities is borne out by other studies. The Bureau of Justice Statistics predicts that 32% of black males born in 2001 will be incarcerated at some point in their lives. *See* Thomas P. Bonczar, Bureau of Justice Statistics, U.S. Dep't of Justice, *Prevalence of Imprisonment in the U.S. Population, 1974-2001*, at 1 (2003), *available at* http://tinyurl.com/BJSincarceration. Assuming the same non-conviction rate of 30%, there will be 1 non-conviction of a black male for every 2.3 convictions. This suggests that in addition to the 32% of black males who will be convicted and incarcerated at some point in their lives, approximately 14% additional black males born that same year will be arrested but never convicted.[9] When those arrests are for qualifying

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[8] This assumes that black arrestees are just as likely to be convicted as white arrestees. Of course, if black arrestees are less likely to ultimately be convicted, the database would contain even more profiles from innocent blacks.

[9] Although these estimates may include some people who are incarcerated for one crime but had a previous non-conviction arrest for a separate crime, a conservative non-conviction rate counterbalances such an effect by underestimating the number of innocent arrestees overall.

offenses, the government will end up collecting DNA from a sizeable portion of a minority group that has never been convicted of any crime.

B. Expungement Procedures Will Not Protect Innocent Arrestees' DNA Profiles from Remaining in the Database.

In the face of these substantial non-conviction rates, and their disproportionate effect on minorities, an amicus brief submitted by a group of state governors urges the Court to allow the collection of DNA data from mere arrestees because they claim that data will be expunged from the database if the arrestee is not ultimately convicted. *See* Br. of the Nat'l Governors' Assoc. at 17-18; *see also* Br. of Susana Martinez at 19-20. But the possibility of eventual expungement does not eliminate the prospect of innocent arrestees being included in the database. And as with other aspects of the criminal justice system in general and the collection of DNA in particular, minorities are likely to bear a disproportionate weight of that defect.

First, even in states where an arrestee's DNA information is automatically expunged if the arrestee is not ultimately convicted of a crime, it can take months or years until the DNA profile is destroyed. *Cf.* Julie Samuels et al., *Collecting DNA From Arrestees: Implementation Lessons*, 270 Nat'l Inst. Just. J. 18, 23 (2012) (noting that "[s]tate-initiated expungement processes require a great deal of coordination between the laboratory and the agency responsible for initiating the expungement process"). In the interim, innocent arrestees may suffer the

consequences associated with having their DNA profile in a forensic database, including – but not limited to – being falsely incriminated of a crime or subjected to familial searches. *See generally infra* Parts II.A&B (discussing harms of commingling DNA profiles of innocent arrestees and convicted felons).

Moreover, expungement processes in many states are not self-executing. Instead, they place the onus of removing a DNA profile from the database on the innocent arrestee himself. Of the 29 jurisdictions that collect DNA upon arrest or indictment, 17 require the arrestee to file a request with a state law enforcement agency or court, and those jurisdictions almost always require the arrestee to provide supporting certified documents showing that no charges were brought, the charges were dismissed, or the petitioner was found not guilty.[10] Another two

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[10] *See* 42 U.S.C. § 14132(d)(1) (request to FBI, filed with supporting court documentation); Ala. Code § 36-18-25(i) (only by court order); Alaska Stat. § 44.41.035(i) (written request, filed with supporting court order); Ariz. Rev. Stat. Ann. § 13-610(M) (petition the court); Cal. Penal Code § 299(c) (written request, with supporting court documentation); Fla. Stat. Ann. § 943.325(16) (request to Department of Law Enforcement, with supporting court documentation); 730 ILCS 5/5-4-3(f-1) (request to Department of State Police, with supporting court documentation); Kan. Stat. Ann. § 21-2511(e)(4) (request to Kansas Bureau of Investigation); La. Rev. Stat. Ann. 15:614(B) (request to state police, with supporting court order); Mich. Comp. Laws Ann. § 28.176(11) (request to state police, with supporting court documentation); N.J. Rev. Stat. § 53:1-20.25(a)(1)(i) (effective Feb. 1, 2013) (petition the court); N.M. Stat. Ann. § 29-16-10(B)(3) (request to administrative center, with supporting court documents); N.D. Cent. Code § 31-13-

jurisdictions automatically remove profiles only in limited scenarios, and otherwise require the arrestee to send a request to a government agency.[11] All of these procedures involve substantial delay and impose both actual costs and administrative burdens on the innocent arrestee seeking expungement.[12]

These procedural hurdles pose a barrier to all innocent arrestees, but innocent minority arrestees may be especially unwilling or unable to expend the resources necessary to achieve the expungement of their DNA from the database. "[F]ew arrestees, no matter how innocent, will be likely ever to return to

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07(1) (petition the court); Okla. Admin. Code § 375:30-9-2 (petition the court); S.D. Codified Laws § 23-5A-28 (request to state agency).

[11] *See* Colo. Rev. Stat. Ann. §§ 16-23-104(2), -105(2) (automatic only if no felony is charged within a year; otherwise must send request to Colorado Bureau of Investigation); Minn. Stat. § 299C.105(3) (automatic only if defendant found not guilty of a felony; otherwise must send request to Bureau of Criminal Apprehension).

[12] For example, in California the arrestee must wait until he either has been pardoned or acquitted, his case has been dismissed, or the statute of limitations has expired, which for felonies is a minimum of three years. Cal. Pen. Code. § 299(b); §§ 799-801. The innocent arrestee must then send an expungement request to numerous parties, *id.* § 299(c)(1), and then wait at least six months to give the state an opportunity to object. *Id.* § 299(c)(2)(D). After filing still more documentation, *id.* § 299(c)(2)(A)-(D), the court has discretion to deny the petition, in which case the petitioner has no recourse – the decision is a "nonappealable order and shall not be reviewed by petition for writ." *Id.* § 299(c)(1). And even if the innocent arrestee prevails, he must submit the court order to the California Department of Justice and wait for it to destroy the DNA sample and profile. *Id.* § 299(c)(2).

court to wade through the process of getting their samples and profiles removed. This is particularly true for those without the resources to hire a lawyer to assist them." Michael T. Risher, *Racial Disparities in Databanking of DNA Profiles*, *in Race and the Genetic Revolution: Science, Myth, and Culture* 51 (Sheldon Krimsky & Kathleen Sloan, eds. 2011); Jon Geffen & Stefanie Letze, *Chained to the Past: An Overview of Criminal Expungement Law in Minnesota*—State v. Schultz, 31 Wm. Mitchell L. Rev. 1331, 1338-39 (2005) (low income individuals less likely to seek expungement of criminal records because they lack resources to hire counsel); *see also* Samuels et al., *supra*, at 23 ("[O]ur interviews with state crime laboratories suggest that when individuals bear the burden of initiating the expungement process, very few expungements actually occur and profiles are retained of individuals who were never formally charged with a qualifying offense or whose case resulted in acquittal or dismissal."). Indeed, imposing procedural hurdles to expungement makes it unlikely that a person of limited resources, or someone distrusting of law enforcement, will pursue the expungement of his DNA from the database. And the result will be that minorities, who will make up a disproportionate number of those arrested but not convicted, will also make up a disproportionate number of those innocent arrestees whose DNA material is never expunged from the database.

II. Expanding The Collection Of DNA Samples To Include Mere Arrestees Will Stigmatize Innocent Minorities And Unfairly Target Them For Law Enforcement Surveillance.

It is disturbing that any innocent person's DNA would appear in a database purportedly consisting of DNA from convicted criminals. But the consequences are particularly severe for innocent minorities. Because they are likely to be disproportionately represented in the database, and because of pre-existing disparities associated with minorities and law enforcement, innocent minorities will likely be especially subject to stigmatization and unwarranted law enforcement surveillance as a result of their inclusion in the database. Moreover, to the extent that familial searches are permitted from collected DNA (as they increasingly are), these consequences will spread beyond innocent arrestees to their families, and familial searches will manifest similar racial and ethnic disparities.

A. Databanking Of Innocent Minorities Increases Stigma And May Contribute To Racial Profiling And Wrongful Convictions.

Being included in a DNA database of convicted criminals is likely to perpetuate the stigma that innocent minorities already experience from having been disproportionately arrested and singled out for law enforcement scrutiny. Because of preexisting stereotypes about race and criminality, innocent minorities are especially likely to be labeled a criminal simply because their DNA profiles have been catalogued. *See* Sonia M. Suter, *All in the*

Family: Privacy and DNA Familial Searching, 23 Harv. J.L. & Tech. 309, 371 (2010) (disproportionate investigations of minorities reinforce stereotypes about criminality and race).[13]

The stigmatization of innocent minorities may also lead to concrete, negative law enforcement consequences. For example, law enforcement officials may be biased against someone whose DNA is in the database on the theory that prior interaction with law enforcement makes it more likely that the person is guilty of a crime. Police officers increasingly have access to DNA profiles while on patrol, which may lead officers to subject a person of color to questioning for no other reason than that his profile appears in the database.[14]

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[13] These effects may not be limited to the sphere of criminal justice. If DNA records become available more broadly, as forms of arrest records are, minorities may face discrimination in contexts such as employment, occupational licensing, and public housing. *See* Legal Action Center, *After Prison: Roadblocks to Reentry* 10, 16 (2004); *see also, e.g.*, Amy L. Solomon, *In Search of a Job: Criminal Records as Barriers to Employment*, 270 Nat'l Inst. Just. J. 42, 43-44 (2012) (discussing disparate impact of arrest-based employment decisions on people of color); U.S. Equal Employment Opportunity Comm'n, EEOC Enforcement Guidance No. 915.002, *Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964* (Apr. 25, 2012), http://tinyurl.com/eeocguidance (permitting an employer to make an employment decision "based on the conduct underlying an arrest if the conduct makes the individual unfit for the position in question").

[14] Indeed, preexisting stigma or prejudice against minorities may even lead individual officers to make "questionable or outright illegal arrests" in the hopes of collecting a DNA sample. Risher, *supra*, at 59.

Krimsky & Simoncelli, *supra*, at 264 (describing the use of portable devices that allow police officers to upload DNA samples and provide remote access to DNA profiles). Given the well-documented profiling and targeting of Latinos due to concerns about illegal immigration, permitting the collection of DNA from innocent arrestees is likely to have an increasingly disproportionate impact on Latino communities. *See generally* Written Statement of Anthony D. Romero, Executive Director, American Civil Liberties Union, Before the Subcomm. on the Constitution, Civil Rights and Human Rights of the S. Comm. on the Judiciary, Hearing on "Ending Racial Profiling in America" 9-18 (Apr. 17, 2012) ("*Romero Racial Profiling Testimony*"), *available at* http://tinyurl.com/romeroACLU (discussing profiling and pretextual arrests of Latinos as part of federal and state immigration initiatives); Aarti Kohli et al., The Chief Justice Earl Warren Institute on Law and Social Policy, Research Report, *Secure Communities by the Numbers: An Analysis of Demographics and Due Process* (Oct. 2011), *available at* http://tinyurl.com/KohliSComm (finding that federal immigration policy disproportionately targets Latinos and leads to arrest of hundreds of U.S. citizens).

Indeed, DNA identification has already been used to identify suspects in ways that are reminiscent of more traditional forms of racial profiling. Perhaps the best example of that phenomenon is racially targeted DNA dragnets, where law enforcement officials have solicited, collected, and stored DNA samples from large numbers of innocent people of color to hone in on minority suspects. *See, e.g.*, Troy

Duster, *DNA Dragnets and Race: Larger Social Context, History and Future* 15-16 (2009), http://tinyurl.com/dnadragnet (originally presented at CRG's conference, Forensic DNA Databases and Race: Issues, Abuses and Actions, held June 19, 2008 at New York University). Thus, in the early 1990s, police in San Diego collected DNA samples from 750 African American men as part of a search for a serial killer who had been identified as African American. *Id.* at 16. A similar dragnet in Charlottesville, Virginia was temporarily suspended and then strictly limited after police drew heavy criticism for collecting DNA samples from almost 200 men of color as part of an investigation of a serial rapist. *See* Maria Glod, *Charlottesville to Limit DNA Dragnet in Rape Case*, Wash. Post, Apr. 17, 2004, at B01 (reporting that police limited scope of dragnet based on accusations of racial profiling). Likewise, the existence of DNA databases maintained by local jurisdictions – many of which contain more information than CODIS and are not limited to offender samples – serves to magnify the concern about profiling and police abuse.[15] *See* Natalie Ram,

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[15] The use of ancestry testing of crime scene DNA to make broad stroke predictions of a perpetrator's race based on genetic phenotyping threatens to introduce yet another form of DNA-based racial profiling. *See* Melba Newsome, *The Inconvenient Science of Racial DNA Profiling*, Wired, Oct. 5, 2007, http://tinyurl.com/newsomeprofiling (reporting that DNAWitness, a DNA testing program used to provide ancestry testing services to law enforcement, "has been used in more than 150 criminal cases all across the country and in London"). The basic assumption behind ancestry testing is that there are differences in the relative frequencies of DNA patterns in the inhabitants of four geographical regions of the world: Africa,

Fortuity and Forensic Familial Identification, 63 Stan. L. Rev. 751, 762 (2011) (noting that it is unclear how local law enforcement use such databases, but that some include profiles of excluded suspects).

In addition to stigmatizing innocent minorities and contributing to increased racial profiling, DNA databases that contain the profiles of innocent minorities are also likely to contribute to unfair and inequitable results in criminal investigations and prosecutions. First, using a racially skewed database that includes innocent people to identify suspects will create an undeniable discriminatory "feedback loop" for minorities. Risher, *supra*, at 54; Krimsky & Simoncelli, *supra*, at 262-63. The

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Asia, Europe and Pre-Columbian America. By locating the source of the crime scene DNA to one of the four main population groups, ancestry testing companies claim, with some level of confidence, that the source of the DNA was a person from one of those regions of the world. That type of profiling is of particular concern because it is a limited, potentially prejudicial science that was developed for population studies and not for individual identification. *See* Duana Fullwiley, *Can DNA "Witness" Race?: Forensic Uses of An Imperfect Ancestry Testing Technology*, *in Race and the Genetic Revolution*, *supra*; Manfred Kayser & Peter M. Schneider, *DNA-Based Prediction of Human Externally Visible Characteristics in Forensics: Motivations, Scientific Challenges, and Ethical Considerations*, 3 Forensic Sci. Int'l: Genetics 154, 157 (2009); Pilar N. Ossorio, *About Face: Forensic Genetic Testing for Race and Visible Traits*, 34 J.L. Med. & Ethics 277, 281-83 (2006). Moreover, as population geneticists know, racial profiles of this type will be useless in areas where population groups consist of people of recently mixed ancestry. *See* Pilar Ossorio & Troy Duster, *Race and Genetics: Controversies in Biomedical, Behavioral, and Forensic Sciences*, 60 Am. Psychologist 115, 121 (2005).

number of return hits against a database containing a disproportionate number of African-American DNA profiles will likely ensnare a disproportionate number of African American suspects. *See, e.g.*, Duster, *Selective Arrests, supra*, at 329 ("If the DNA database is primarily composed of those who have been touched by the criminal justice system, and that system has engaged in practices that routinely select more from one group [than] from others, there will be an obvious skew or bias toward this group in the database.").

Importantly, those skewed results will *not* necessarily occur because minorities are more likely to have committed a crime, but rather because greater numbers of innocent minorities have had an encounter with law enforcement than their white counterparts. *See* Pilar Ossorio & Troy Duster, *Race and Genetics: Controversies in Biomedical, Behavioral, and Forensic Sciences*, 60 Am. Psychologist 115, 124 (2005) (explaining that minorities will face a greater likelihood of being identified as "cold hit" suspects based on their disproportionate representation in DNA databases, "even though minorities are no more likely to commit crimes and in some cases are actually less likely to do so"); *see generally* Krimsky & Simoncelli, *supra*, at 254-55 (studies of criminal behavior do not show disproportionate criminal activity by minorities); *Romero Racial Profiling Testimony*, supra, at 5-6 (same). Conversely, those populations that are underrepresented in the database will be underrepresented in criminal investigations arising from DNA searches not because of their relative

innocence, but rather because they have been not been arrested and subjected to DNA collection. *See* Risher, *supra*, at 54; Duster, *Selective Arrests*, *supra*, at 329.

Once minorities are disproportionately identified by way of a DNA match, they will face a correspondingly greater risk of false arrests and false convictions than their white counterparts. Krimsky & Simoncelli, *supra*, at 263. In the context of DNA-based cases, those risks result from a variety of factors, including human error in collecting and processing DNA leading to cross-contamination and mislabeling of samples, testing errors in forensic laboratories leading to false positive matches between DNA profiles, the inherently subjective analysis of mixed DNA samples, and – in some cases – analyst bias. *See* William C. Thompson, *The Myth of Infallibility*, *in Genetic Explanations: Sense and Nonsense* (Sheldon Krimsky & Jeremy Gruber eds., forthcoming Feb. 2013) (detailing the numerous causes of false DNA matches and resulting false incriminations and convictions); Erin Murphy, *The New Forensics: Criminal Justice, False Certainty, and the Second Generation of Scientific Evidence*, 95 Cal. L. Rev. 721, 753-56, 767 (2007) ("*New Forensics*") (highlighting cases of false positive DNA matches leading to wrongful convictions and imprisonment). Those types of errors have led not only to false incriminations, but to false convictions, as in the case of Dwayne Jackson, who served almost four years in prison for a robbery that he did not commit after a lab technician accidentally switched his DNA sample with the perpetrator's sample. *See*

Jackie Valley, *Metro Reviewing DNA Cases After Error Led to Wrongful Conviction*, Las Vegas Sun, July 7, 2011, http://tinyurl.com/valley-jackson.

Relatedly, innocent minorities faced with DNA evidence inevitably will encounter structural difficulties that make mounting a defense particularly challenging. *See, e.g.*, Thompson, *supra* (discussing barriers and limits to retesting of DNA samples). As Erin Murphy has explained, "structural barriers impede the development of robust 'defense-oriented' forensic research and practices," and requests by defense attorneys for an independent examination of DNA evidence are often met with resistance, refusal, and even hostility. Murphy, *New Forensics*, *supra*, at 747-48; *see id.* at 753 ("Even assuming open access to all the underlying material, defense lawyers would encounter difficulty in finding an expert qualified to conduct research or review."). Moreover, "[t]he very 'scientific' nature of [DNA] evidence bestows an air of reliability that defense attorneys may be loathe to confront." *Id.* at 765.

At a minimum, mounting a successful challenge to DNA evidence requires both financial resources and highly effective advocacy, which minority defendants often lack. Josiah Sutton, an African American who was wrongly convicted of rape based on DNA evidence, provides a powerful example. Sutton sought independent DNA testing during his trial, and claimed on appeal that his attorney was ineffective for not obtaining it. The appellate court, however, concluded that the reasons the attorney provided for not obtaining an independent DNA

analysis – one of which was that the attorney "informed appellant's family he would need more money for the analysis to be performed but they failed to pay it" – were consistent with "reasonable trial strategy." *Sutton v. Texas*, No. 14-99-00951-CR, 2001 WL 40349, at *2 (Tex. Ct. App. – Houston Jan. 18, 2001). Sutton was ultimately exonerated when, after spending four and a half years in prison, a state audit revealed widespread errors with the state crime laboratory that conducted the initial DNA testing. *See* Adam Liptak, *Review of DNA Clears Man Convicted of Rape*, N.Y. Times, Mar. 11, 2003, at A18, *available at* http://tinyurl.com/liptak-sutton; Innocence Project, *Know the Cases – Josiah Sutton*, http://tinyurl.com/sutton-innocence (last visited Jan. 21, 2013).

Because the criminal justice system is administered by individuals who exercise discretion and make errors, some of the consequences that flow from an increased reliance on DNA evidence are inevitable. But the disparate impact that those consequences will have on innocent minorities is not inevitable and will be exacerbated by a DNA database that includes the profiles of large numbers of innocent minority arrestees.

B. Familial Searching Unfairly Targets Innocent Minorities for Investigation.

The expansion of the DNA databases also could subject numerous people of color to law enforcement scrutiny for no other reason than that they have a relative who was once arrested.

Just as collecting and retaining DNA samples from arrestees who are not ultimately convicted implicates innocent people, familial searching targets innocent people by comparing DNA samples that *do not match* crime-scene samples to determine whether the databased person may be a blood relative of the perpetrator of another crime. Once a potential relative is identified, that person and his family members may become the focus of a law enforcement inquiry. In other words, familial searching puts innocent people in jeopardy of police surveillance and investigation simply because one member of their family (who may be an innocent arrestee himself) has a DNA profile on CODIS. *See* Henry T. Greely et al., *Family Ties: The Use of DNA Offender Databases to Catch Offenders' Kin*, 34 J.L. Med. & Ethics 248, 256, 258 (2006).

Familial searching thus creates a troubling regime of "guilt by association," implicating in criminal investigations both innocent arrestees whose DNA has already been collected and members of their family that are not in the database. In many cases, that regime may also lead to family rifts and cause stress or embarrassment for innocent family members of perpetrators. *See, e.g.*, Erin Murphy, *Relative Doubt: Familial Searches of DNA Databases*, 109 Mich. L. Rev. 291, 313-21 (2010) ("*Relative Doubt*") (raising concerns about privacy and disruption of family relationships; providing example of British teenager whose reckless driving offense led to familial search and arrest of his father and two uncles for murder); *Utilizing DNA Technology To Solve Cold Cases Act of 2011: Hearing*

on H.R. 3361 Before the Subcomm. on Crime, Terrorism, and Homeland Security of the H. Comm. on the Judiciary, 112th Cong. 31 (2012) (Prepared Statement of Henry T. Greely, Professor of Law, Stanford Law School) (criminal investigations involving familial DNA searches could reveal misattributed parentage (*i.e.*, a son learning that he has a different biological father than he thought)).

As with other ramifications arising from a racially unbalanced DNA database, familial searching and the potential harms associated with that investigative technique will be borne more heavily by African Americans for the simple reason that a higher percentage of the African-American population is likely to be closely related to someone in the database. *See* Ram, *supra*, at 789-90 (collecting sources that explain this phenomenon and noting that "expanding database coverage to include offenders' relatives through partial matching grossly amplifies th[e] existing bias" in DNA databases); Murphy, *Relative Doubt*, *supra*, at 322-23 ("[R]eliance on racially disproportionate databases will on average impact the targeting of suspicion, drawing disproportionate attention toward Hispanics and African Americans . . . ."); Suter, *supra*, at 370. Indeed, a widely cited study has estimated that African Americans would be identified as suspects 4 to 5 times more than whites through familial searches and that roughly 17 percent of the African-American population would be "under surveillance," the majority of whom would be relatives of those in the database. Greely et al., *supra*, at 259. Another scholar has collected data showing that Hispanics

are likely to be particularly impacted by familial searching because of their large family structures. *See* Daniel J. Grimm, *The Demographics of Genetic Surveillance: Familial DNA Testing and the Hispanic Community*, 107 Colum. L. Rev. 1164, 1177-85 (2007).

The disparate impact of familial searching is *per se* problematic because it will unfairly subject innocent minorities to increased scrutiny by law enforcement. Similarly distressing, however, is the *perception* of racial bias in DNA databases that familial searches may create. As Erin Murphy has explained, "[u]sing offender databases to find relatives sends a message that in cases where there is no evidence of the perpetrator's identity or ethnicity, it is fair to focus suspicion on not just the usual suspects, but also the innocent relatives of the usual suspects." Murphy, *Relative Doubt*, *supra*, at 323; *see also* Krimsky & Simoncelli, *supra*, at 88 (noting that racial disparities in the criminal justice system, "combined with the increasing use of familial searches, may have the deeper impact of reiterating the faulty and highly dangerous notion that criminal propensity is genetic and racialized"). To the extent that people of color view the use of DNA databases to conduct familial searching as "another racist action by the American criminal justice system," *Greely* et al., *supra*, at 259, using DNA databases in this way may further delegitimize law enforcement efforts in minority communities. *See* Murphy, *Relative Doubt*, *supra*, at 323; *cf.* D.H. Kaye & Michael E. Smith, *DNA Identification Databases: Legality, Legitimacy, and the Case for Population-Wide Coverage*, 2003

Wis. L. Rev. 413, 458 (arguing that a racially imbalanced arrest-based DNA database "would further damage the legitimacy of the criminal law and of law enforcement agencies in areas where public safety is most in disrepair").

Concerns about familial searching are far from hypothetical. State policies vary widely and are often either unwritten or difficult to access, *see* Ram, *supra*, at 767-83, but at least four states – California, Colorado, Virginia, and Texas – have written policies that explicitly permit familial searches.[16] *See* Laboratory Services, FBI, *Familial Searching*, http://tinyurl.com/fbi-familialsearching (last visited Jan. 10, 2013). States that engage in familial searching are permitted to use software to search CODIS for partial matches and to share information between states.[17] *See* Ram, *supra*, at 762, 785; Jeffrey Rosen, *Genetic Surveillance For All*, Slate (Mar. 17, 2009, 4:52 PM), http://tinyurl.com/rosen-surveillance (last visited Jan. 10, 2013).

Moreover, in the absence of definitive policies, many individual laboratories have conducted familial searches on their own. *See* Ram, *supra*, at 762. Given that the unmistakable trend has been to expand the uses of DNA databases over the course of their short history, it is likely only a matter of time

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[16] By contrast, only two jurisdictions have laws explicitly prohibiting such searches. *See* D.C. Code § 22-4151(b); Md. Code Ann., Pub. Safety § 2-506(d).

[17] Although familial searching does not currently occur at the federal level, there has been legislative interest in adopting it. *See* Utilizing DNA Technology to Solve Cold Cases Act of 2011, H.R. 3361, 112th Cong. (2011).

before familial searches take hold more broadly. In the meantime, the increasing use of familial searches likely will contribute to the undue focus of criminal investigations in minority communities, a problem that will be aggravated by the inclusion of arrestees in DNA databases.

C. The Experience In The United Kingdom Provides A Window Into The Future Of DNA Databanking In The United States.

As the discussion above makes clear, the concerns about adding innocent arrestees to DNA databases are well-founded. One need only look to the United Kingdom to see the problems associated with creating a massive, racially disproportionate database that contains the DNA profiles of large numbers of innocent minorities. Indeed, the story of forensic DNA collection in the United Kingdom highlights both the problem of stigmatization that comes with comingling the DNA of innocent minorities and convicted felons and the harms of creating a system that prevents innocent people from having their DNA removed from the database.

The United Kingdom began collecting forensic DNA samples in 1984 and established its National DNA Database ("NDNAD") in 1995. Krimsky & Simoncelli, *supra*, at 169-70. Similar to the trend in the United States, DNA collection in the United Kingdom underwent a series of expansions over a relatively short period of time, eventually being broadened to include anyone over the age of 10 years

old arrested for a "recordable offense."[18] *Id.* at 171-72. As a result, the NDNAD is the "oldest, largest per capita, and most inclusive national forensic DNA database in the world." *Id.* at 167. As of September 2012, the NDNAD contained DNA profiles of approximately 9.6% of the total population in the United Kingdom. *Compare* Office for Nat'l Statistics, Statistical Bulletin, *2011 Census: Population Estimates for the United Kingdom*, 27 March 2011 (Dec. 2012), http://tinyurl.com/UKtotalpop (total population of United Kingdom is 63.2 million), *with* Nat'l Policing Improvement Agency, Statistics, NDNAD Breakdown, http://tinyurl.com/ndnadtotal (estimated total number of individuals retained on NDNAD is 6.07 million).

Also similar to forensic DNA databases in the United States, racial disparities at all stages of the criminal justice system have contributed to a severe disproportionality in the racial composition of the NDNAD: as of 2009, the database contained DNA profiles of almost 40% of black men and more than 3/4 of black men between the ages of 18 and 35. *See* Human Genetics Comm'n, *Nothing to Hide, Nothing to Fear?: Balancing Individual Rights and the Public Interest in the Governance and Use of the National DNA Database* 3 (Nov. 2009), *available at*

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[18] A recordable offense includes not only all offenses punishable with imprisonment, but also many other offenses that police keep on record. *See* The National Police Records (Recordable Offences) Regulations, 2000, S.I. 2000/1139 (U.K.); *see also, e.g.*, The National Police Records (Recordable Offences) (Amendment) Regulations, 2012, S.I. 2012/1713 (Eng. & Wales); The National Police Records (Recordable Offences) (Amendment) Regulations, 2007, S.I. 2007/2121 (Eng. & Wales).

http://tinyurl.com/hgc-ndnadreport. By contrast, only 6% of adult white males had DNA profiles in the NDNAD. Krimsky & Simoncelli, *supra*, at 179 (citing Nick Taylor, *Genes on Record – One Size Fits All?*, 156 New L.J. 1354 (2006)).

Those shocking disparities caught the attention of public officials, leading the British House of Commons Home Affairs Committee to conclude that the United Kingdom was "moving unwittingly towards a situation where the majority of the black population will have their data stored on the DNA database," and to express concern that "young black people who have committed no crime are far more likely to be on the database than young white people." House of Commons, Home Affairs Committee, *Young Black People and the Criminal Justice System*, Second Report of Session 2006-07, Vol. 1 ¶ 33 (May 22, 2007), *available at* http://tinyurl.com/homeaffairsrpt ("*Home Affairs Committee Report*"). Non-governmental entities similarly warned that the racial disparities in the NDNAD "increase the risk of stigmatisation attendant on being known to have a profile on the NDNAD and can potentially lead to further alienation of whole ethnic communities." Nuffield Council on Bioethics, *The Forensic Use of Bioinformation: Ethical Issues* 57 (2007); *see also Home Affairs Committee Report* ¶ 33 (expressing doubt that those disparities "can be justified on grounds of equity or of public confidence in the criminal justice system").

The United Kingdom has also had to grapple with the problem of retaining the DNA profiles of innocent

arrestees. Laws in the United Kingdom governing the expungement of DNA profiles have undergone a series of changes since the introduction of DNA collection in 1984, but from 2003 until recently, England, Wales, and Northern Ireland permitted the indefinite retention of DNA information from anyone, including non-convicted arrestees.[19] *See* Criminal Justice Act 2003, 2003 c.44, Pt. 1, § 10 (expanding collection of DNA samples to those in police detention after arrest); Criminal Justice and Police Act 2001, 2001 c.16, Pt. 3, § 82 (removing obligation to destroy DNA sample after individual is neither prosecuted nor cleared). In recent years, British Parliament has amended those laws to provide greater protections for innocent people who have been subjected to DNA sampling. *See* Krimsky & Simoncelli, *supra*, at 178-85; Protection of Freedoms Act 2012, 2012 c.9, Pt. 1, ch. 1; Crime and Security Act 2010, 2010 c.17, Pt. 14, § 2. Those amendments were prompted not only by public concerns about the disproportionate number of minorities with profiles in the NDNAD, but also by a decision by the European Court of Human Rights that the United Kingdom's indefinite retention of DNA information violated the European Convention on Human Rights. *See S. & Marper v. United Kingdom*, 2008 Eur. Ct. H.R. 1581, ¶¶ 125-126; *see id.* ¶ 122 (recognizing the risk of stigmatization "stemming from the fact that persons in the position

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[19] In 2006, the Scottish Parliament rejected a proposal that would have permitted broad retention of DNA information from arrestees, opting instead for a much more limited approach similar to the system that the British Parliament enacted in 2012.

of the applicants, who have not been convicted of any offence and are entitled to the presumption of innocence, are treated in the same way as convicted persons").

As the British experience demonstrates, the dangers of collecting and storing DNA information from mere arrestees is not unique to the American criminal justice system. The problems exposed through that experience should serve as a warning about the expansion of DNA databases to include innocent minority arrestees in this country.

CONCLUSION

Amicus CRG respectfully urges the Court to affirm the judgment of the Maryland Court of Appeals.

Respectfully submitted,

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