No. ___

IN THE

# Supreme Court of the United States

PAUL N. BOULINEAU AND JOHN W. BURNEY,

*Petitioners,*

v.

JAMES E. DONALD, COMMISSIONER OF THE GEORGIA DEPARTMENT OF CORRECTIONS, GEORGIA BUREAU OF INVESTIGATION, AND GEORGIA DEPARTMENT OF CORRECTIONS,

*Respondents.*

**On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit**

## PETITION FOR WRIT OF CERTIORARI

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## QUESTION PRESENTED

Does a state statute mandating the forced extraction of DNA samples from all convicted felons while in custody for law enforcement purposes without a warrant or any individualized suspicion violate the search and seizure provision of the Fourth Amendment?

## PARTIES TO THE PROCEEDINGS

The parties to the proceedings below were the following:

Boulineau, Paul N. (Appellant)

Burney, John W. (Appellant)

Donald, James E. (Appellee)

Ferrero, Joe (Defendant in district court)

Georgia Bureau of Investigation (Appellee)

Georgia Department of Corrections (Appellee)

Padgett, Roy (Plaintiff in district court)

Pettigrew, Frederick (Plaintiff-Intervenor in district court)

Wetherington, Jim (Defendant in district court)

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## PETITION FOR A WRIT OF CERTIORARI

Paul N. Boulineau and John W. Burney respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

## OPINIONS BELOW

The opinion of the court of appeals is reported at *Padgett v. Donald*, 401 F.3d 1273 (Pet. App. 1a-15a). The opinion of the United States District Court for the Northern District of Georgia is reported at *Padgett v. Ferrero*, 294 F. Supp. 2d 1338 (Pet. App. 16a-25a).

## JURISDICTION

The court of appeals entered judgment on March 4, 2005. This Court has jurisdiction under 28 U.S.C. § 1254(1).

## PERTINENT CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no Warrant shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.

The pertinent provisions of the Official Code of Georgia are reprinted in the appendix. (Pet. App. 26a-32a).

## STATEMENT OF THE CASE

Deoxyribonucleic acid ("DNA") "holds the very key to the nature of living things." James D. Watson, *DNA*, xi (2003). In a very real sense, it is what makes a person what he or she is, a unique individual. As the Georgia General Assembly has recognized, "[g]enetic information is the unique property of the individual . . . " O.C.G.A. § 33-54-1(1).

In this action. Petitioners Paul Boulineau and John Burney challenge the constitutionality of a Georgia statute authorizing the forced extraction of DNA samples for use as evidence in any subsequent criminal investigation. *See* O.C.G.A. § 24-4-60 *et seq.* (the "Statute") (Pet. App. 26a-32a).

The Statute requires all convicted felons incarcerated in state correctional facilities to provide a DNA sample to the state for analysis and inclusion in the Georgia Bureau of Investigation's ("GBI") DNA database for use by federal and state investigators for law enforcement purposes. The obtaining of a DNA sample under the Statute is a warrantless search that is conducted without probable cause or even reasonable suspicion. Moreover, those searches—and the invasions of privacy attendant to such searches—are not supported by any "special need" or other exception that could exempt them from the warrant requirement. Balancing the interests of the parties, the lower court concluded that Petitioners' expectation of privacy must yield to the state's interest in creating and maintaining a DNA database for law enforcement purposes despite the fact that searches conducted pursuant to the Statute are conducted without any individualized suspicion whatsoever. Because this ruling contradicts the Court's recent decisions in *City of Indianapolis v. Edmond*, 531 U.S. 32 (2000), and *Ferguson v. City of Charleston*, 532 U.S. 67 (2001), and runs counter to the intent of the Framers in adopting the Fourth Amendment, the ruling below warrants review.

**Statement of Facts.** The Facts of this case are undisputed.

All 50 states and the federal government have statutes authorizing the government to take DNA samples from persons convicted of a crime, in some states, persons who have merely been arrested. *See* Mark Hansen, *DNA Dragnet*, ABA JOURNAL, May 2004, at 42. In 2000, the Georgia General Assembly amended Georgia's DNA

collection statute to require all convicted felons to provide a DNA sample for inclusion in the state's DNA database. Specifically, the Statute requires:

> [O]n and after July 1, 2000, any person convicted of a felony and incarcerated in a state correctional facility shall at the time of entering the prison system have a sample of his or her blood, an oral swab, or a sample obtained from a noninvasive procedure taken for DNA (deoxy-ribonucleic acid) analysis to determine identification characteristics specific to the person. The provisions and requirements of this Code section shall also apply to any person who has been convicted of a felony prior to July 1, 2000, and who currently is incarcerated in a state correctional facility in [Georgia] for such offense.

O.C.G.A. § 24-4-60. (Pet. App. 26a).

The "identification characteristics" obtained through analysis of DNA samples taken pursuant to the Statute are to be stored in a database maintained by the GBI. *Id.* (Pet. App. 27a). The information stored in the database "shall be made available directly to federal, state, and local law enforcement officers upon a request made in furtherance of an official investigation of any criminal offense." O.C.G.A. § 24-4-63(a). (Pet. App. 30a). Furthermore, "[t]he name of the convicted offender whose profile is contained in the data bank may be related to any other data bases which are constructed for law enforcement purposes and may be disseminated only for law enforcement purposes." O.C.G.A. § 24-4-63(b)(2). (Pet. App. 30a).

Petitioners Boulineau and Burney were convicted of felonies prior to July 1, 2000 and were incarcerated at the Men's State Prison in Hardwick, Georgia as of that date. During the pendency of this case before the district court, the state planned to collect DNA samples from Boulineau and Burney for analysis and inclusion in the GBI database pursuant to the Statute. Prior to Burney's release date, he moved for an injunction to prevent the collection, analysis,

and inclusion of his DNA in the GBI database under the Statute. By Order of the district court, Mr. Burney was required to provide a DNA sample; however, his DNA will not be analyzed or entered into the database pending the outcome of his constitutional challenge in the present case. By agreement of the parties, prior to Mr. Boulineau's release, he also provided a DNA sample, subject to the same limitations precluding the analysis and inclusion of his DNA information in the GBI DNA database. Both men, after serving their sentences, have been released from state custody.

**The District Court.** On July 15, 2001, Roy Padgett, an inmate at the Men's State Prison in Hardwick, Georgia, proceeding *pro se*, commenced this action challenging the constitutionality of the Statute. Petitioners Boulineau and Burney intervened in the district court action, and counsel was appointed.[1]

On September 3, 2002, Boulineau and Burney filed an Amended Complaint seeking (1) an injunction preventing the Defendants from taking DNA samples from them without their consent, and (2) a declaration that the Statute is unconstitutional. Boulineau and Burney challenged the Statute as contrary to their Georgia and U.S. Constitutional rights to be free from unreasonable searches and seizures as well as their right to privacy.

In April 2003, the parties filed cross-motions for summary judgment. Boulineau and Burney argued that because the searches at issue are conducted without a warrant, probable cause or individualized suspicion, the constitutionality of the searches was to be evaluated under the "special needs" doctrine. Moreover, because the Defendants could not

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[1] A third individual, Pettigrew, also intervened in the action. Subsequently, Padgett and Pettigrew, who gave DNA samples which are currently in the GBI DNA database, were dismissed from this action. Neither Padgett nor Pettigrew is a party to this appeal.

demonstrate that the searches were justified by a special need beyond the ordinary need for law enforcement, the Statute was unconstitutional. Finally, Boulineau and Burney argued that even if their privacy interests were balanced against the public's generalized law enforcement interest, their privacy interests outweighed the public's interest in law enforcement. The Defendants countered that the searches authorized by the Statute were reasonable and, therefore, constitutional because the public's interest in law enforcement outweighs the Plaintiffs' privacy interest.

On December 10, 2003, the district court granted summary judgment to Defendants. The district court's opinion is reported at *Padgett v. Ferrero*, 294 F. Supp. 2d 1338 (N.D. Ga. 2003) (Pet. App. 16a-25a). On December 23, 2003, Boulineau and Burney filed a timely Notice of Appeal.

**The Eleventh Circuit.** On appeal, the Eleventh Circuit affirmed. The court of appeals' opinion is reported at *Padgett v. Donald*, 401 F.3d 1273 (11th Cir. 2005) (Pet. App. 1a-15a). Although the court of appeals acknowledged that searches conducted under the Statute are conducted without a warrant, probable cause or individualized suspicion, it concluded that the searches were reasonable under the "totality of the circumstances." (Pet. App. 10a-11a). In reaching this conclusion, the court of appeals eschewed the "special needs" analysis in favor of a test balancing the interests of the parties. (Pet. App. 7a-8a). The court of appeals struck the balance in favor of State holding that the State's interest in creating a DNA database for law enforcement purposes outweighs the intrusion involved in taking, storing and testing DNA samples. (Pet. App. 11a).

## REASONS FOR GRANTING THE WRIT

In the nearly 215 years since the ratification of the Bill of Rights, this Court has *never* held constitutional a search undertaken for law enforcement purposes without at least a modicum of individualized suspicion of wrongdoing.

Indeed, this Court has strictly limited the types of searches that may be conducted on less than individualized suspicion to a "closely guarded" category of constitutionally permissible suspicionless searches. *See Chandler v. Miller*, 520 U.S. 305, 309 (1997) (concluding that "Georgia's requirement that candidates for state office pass a drug test . . . does not fit within the closely guarded category of constitutionally permissible suspicionless searches" because the searches were not justified by a special need beyond law enforcement).

The decision below joins a cadre of lower court decisions that have invaded this closely guarded category by including within its confines searches conducted to obtain DNA samples for use in criminal investigations without the protection of a warrant, probable cause or, indeed, *any* individualized suspicion whatsoever. These decisions extend this Court's recent decision in *United States v. Knights*, 534 U.S. 112 (2001), beyond its constitutional limits and are in conflict with Supreme Court jurisprudence limiting the type of permissible suspicionless searches and the intent of the Framers in adopting the Fourth Amendment. Thus, the decision below should be reviewed.

## I. THE LOWER COURTS ARE SPLIT ON THE PROPER FOURTH AMENDMENT ANALYSIS TO APPLY TO DNA COLLECTION STATUTES.

Although the Circuit Courts which have addressed the constitutionality of DNA collection statutes have found them constitutional, the courts are split on the proper Fourth Amendment analysis to apply. The Third, Fourth, Fifth, Ninth and Eleventh Circuits apply a "reasonableness" test, which balances the interests of the individual against those of the state to determine whether, under the totality of the circumstances, the search was reasonable given the circumstances surrounding the search and the nature of the search itself. *See United States v. Sczubelek*, 402 F.3d 175, 182 (3d Cir. 2005); *Jones v. Murray*, 962 F.2d 302, 307 (4th

Cir.), *cert. denied*, 506 U.S. 977 (1992); *Groceman v. United States Dep't of Justice*, 354 F.3d 411 (5th Cir. 2004); *United States v. Kincade*, 379 F.3d 813 (9th Cir. 2004) (en banc), *cert. denied*, ___ U.S. ___, 73 U.S.L.W. 3555 (U.S. Mar. 21, 2005); *Padgett v. Donald*, 401 F.3d 1273, 1278 (11th Cir. 2005). The Second and Seventh Circuits, on the other hand, apply a "special needs" analysis, which requires a finding that a special need beyond the ordinary need for law enforcement justifies a warrantless search before the reasonableness inquiry may be made. *See Roe v. Marcotte*, 193 F.3d 72 (2d Cir. 1999); *Green v. Berge*, 354 F.3d 675 (7th Cir. 2004). The Tenth Circuit is internally split applying both a reasonableness test and the special needs analysis in separate cases. *See Boling v. Romer*, 101 F.3d 1336, 1340 (10th Cir. 1997) (reasonableness); *United States v. Kimler*, 335 F.3d 1132, 1146 (10th Cir.) (special needs), *cert. denied*, 540 U.S. 1083 (2003).

The split in the lower court decisions is in large part the result of the extension of the reasonableness analysis enunciated in this Court's recent decision in *United States v. Knights*, 534 U.S. 112 (2001). *See Sczubelek*, 402 F.3d at 184-87; *Groceman*, 354 F.3d at 413; *Kincade*, 379 F.3d at 832; *Padgett*, 401 F.3d at 1278. As discussed in more detail below, applying the decision in *Knights* to suspicionless searches extends *Knights* beyond its constitutional limits and conflicts with the Framers' intent. Without decisive action by this Court, the keys to the citadel surrounding the closely guarded category of suspicionless searches will be given away. Consequently, this case should be reviewed.

## II. THE DECISION BELOW CONFLICTS WITH THIS COURT'S DECISIONS IN *CITY OF INDIANAPOLIS v. EDMOND* AND *FERGUSON v. CITY OF CHARLESTON*

As the decision below notes, the "question of which analysis to apply is more than academic." (Pet. App. 7a). In two recent opinions, this Court defined and narrowed the

scope of the special needs doctrine, making it clear that where, as here, searches are conducted without individualized suspicion, the finding of a special need beyond the need for law enforcement is a necessary prerequisite to the application of a test balancing the interests of the state against those of the individual.

In *City of Indianapolis v. Edmond*, this Court evaluated the constitutionality of suspicionless searches conducted at drug interdiction road blocks. 531 U.S. 32, 34-36 (2000). Rather than simply analyzing the searches under a reasonableness test, the Court first considered whether the primary purpose of the road blocks evinced a special need beyond the state's interest in crime control. *Id.* at 37. Finding no such special need, the Court held that the searches violated the Fourth Amendment without reaching the type of reasonableness test applied in the decision below. *Id.* at 47-48.

Similarly, in *Ferguson v. City of Charleston*, this Court examined the constitutionality of a program authorizing hospital administrators to perform drug screens on urine samples taken from maternity patients who met certain criteria indicating a potential for drug use. 532 U.S. 67, 70-73 (2001). If samples tested positive for drug use, the police were notified. *Id.* at 72. As in *Edmond*, the Court first engaged in a special needs determination. *Id.* at 76. Again, the Court concluded that because the primary purpose of the program was to generate evidence for law enforcement purposes, no special need existed and held the program unconstitutional without performing a reasonableness test. *Id.* at 82-84.

Together, *Edmond* and *Ferguson* teach that: (1) Apart from cases involving a warrant, probable cause or some degree of individualized suspicion, a special need beyond the need for law enforcement must be found as a prerequisite to the application of a test balancing the interests of the state against those of the individual; and (2) In determining

whether a special need exists, courts must closely review the primary purpose of the regime at issue.

Despite the fact that the Statute permits the state to conduct a search of "*any* person convicted of a felony and incarcerated in a state correctional facility," with out a finding of individualized suspicion, O.C.G.A. § 24-4-60 (emphasis added) (Pet. App. 26a), and the fact that the primary purpose of the Statute is to collect evidence for use in "an official investigation of any criminal offense," O.C.G.A. § 24-4-63(a) (Pet. App. 30a), the decision below sidestepped the special needs question and simply did "not address whether [the Statute] could satisfy a 'special needs' analysis." (Pet. App. 8a n.4). Thus, the lower court's ruling cannot be reconciled with *Edmond* and *Ferguson*, 531 U.S. at 37, 41-42 (indicating that there are "only limited circumstances in which the usual rule [requiring individualized suspicion] does not apply" and concluding that "[b]ecause the primary purpose of the . . . narcotics checkpoint program is to uncover evidence of ordinary criminal wrongdoing, the program contravenes the Fourth Amendment"); *Ferguson*, 532 U.S., at 76-86 (applying special needs analysis to a regime of warrantless, suspicionless searches and indicating that "[i]n none of our previous special needs cases have we upheld the collection of evidence for criminal law enforcement purposes").

The decision below attempted to distinguish this case from *Edmond* and *Ferguson* by noting that "the searches they discussed were performed on free persons, not incarcerated felons." (Pet. App. 9a). This is, however, a distinction without out a constitutional difference.

Prisoners "do not forfeit all constitutional protections by reason of their conviction and confinement in prison." *Bell v. Wolfish*, 441 U.S. 520, 545 (1979). Indeed, prisoners are "accorded those rights not fundamentally inconsistent with imprisonment itself or incompatible with the objectives of incarceration." *Hudson v. Palmer*, 468 U.S. 517, 523

(1984). An invasion of a prisoner's rights cannot stand where it "is not reasonably related to . . . penological interests." *Turner v. Safley*, 482 U.S. 78, 97 (1987). Thus, while it is true that, as the lower court noted, prisoners are subject to certain Fourth Amendment deprivations such as suspicionless searches of their cells and visual body cavity searches, those searches are conducted not to obtain evidence for use in subsequent criminal investigations, but rather to further legitimate penological interests such as prison safety. *See Bell*, 441 U.S. at 558-59 (concluding that suspicionless visual body-cavity searches of inmates are constitutional given the "serious security dangers" presented by prison environment); *Hudson*, 468 U.S. at 525-27 (upholding the constitutionality of suspicionless searches of prisoners' cells because "it would be literally impossible to accomplish the prison objectives [of institutional security and internal order] if inmates retained a right of privacy in their cells"). In this case, however, no penological interest is served by the suspicionless searches authorized by the Statute. In fact, prison officials do not even have access to the samples once they are obtained. *See* O.C.G.A. § 24-4-63(a) (limiting access to the DNA information to federal, state, and local law enforcement officers) (Pet. App. 30a). Therefore, the lower court's attempt to distinguish this case from *Edmond* and *Ferguson* falls flat. The conflict between the decision below and this Court's decisions in those cases is intractable.

## III. THE DECISION BELOW EXPANDS *UNITED STATES v. KNIGHTS* BEYOND ITS CONSTITUTIONAL LIMITS.

The lower court's ruling that the constitutionality of the Statute should be evaluated under a reasonableness test was based on its conclusion that "*Knights* . . . not *Ferguson* and *Edmond*, is the applicable Supreme Court precedent . . . ." (Pet. App. 8a). The lower court read *Knights* as permitting the application of a balancing test rather than the special needs analysis *even in the absence of individualized*

*suspicion.* (*Id.*). Such reading, however, extends *Knights* beyond its constitutional limits.

In *Knights*, this Court evaluated the constitutionality of a warrantless search of a probationer's home to obtain evidence to be used in a criminal investigation on a showing of reasonable suspicion alone. 534 U.S. at 114-15. At the time, Knights was sentenced to probation for a drug offense. *Id.* at 114. The probation order required that Knights submit "to search at anytime, with or without a search warrant . . . or reasonable cause . . . ." *Id.* Shortly after Knights was sentenced, a Pacific Gas & Electric electrical vault was set on fire. *Id.* Brass padlocks had been removed from the vault and gasoline was used to ignite the fire. *Id.* Knights and an accomplice were suspected of committing the crime and police began surveillance of Knights' home. *Id.* at 114-15. During the surveillance, an officer saw Knights' accomplice park a pickup truck in front of Knights' residence. *Id.* at 115. The officer observed several items in the bed of the truck including a gas can and two brass padlocks similar to those removed from the scene of the arson. *Id.* Based on his observations and the condition of Knights' probation allowing for warrantless searches, the officer conducted a search of Knights' apartment, which revealed, among other things, various bomb-making materials. *Id.*

At trial, Knights moved to suppress the evidence obtained during the search because it was conducted without a warrant. *Id.* at 116. The district court granted the motion and the Ninth Circuit affirmed. *Id.* On appeal, this Court determined that even though the search of Knights' apartment was conducted without a warrant or probable cause, it was reasonable under the totality of the circumstances "with the probation condition being a salient circumstance." *Id.* at 118. Given Knights' diminished expectation of privacy occasioned by the probation condition, this Court concluded that, under the circumstances, an officer's "reasonable suspicion that a probationer subject to a search condition is engaged in

criminal activity, there is enough likelihood that criminal conduct is occurring that an intrusion on the probationer's significantly diminished privacy interests is reasonable" and a warrant is not required. *Id.* at 121.

"Utilizing the *Knights* approach," the lower court in this case concluded that the Statute was reasonable by "weighing the degree to which the search intrudes on an individual's privacy against the degree to which it promotes a legitimate governmental interest." (Pet. App. 10a-11a). The lower court was "persuaded" that "[i]f the Supreme Court approves dispensing with the special needs analysis for probationers, . . . we may take a similar approach in cases involving prisoners . . . ." (*Id.* at 10a). The decision below, however, gives short shrift to a key distinction between this case and *Knights*—the search at issue in *Knights* was based on reasonable suspicion.

To extend *Knights* to cover suspicionless searches is to extend *Knights* beyond its constitutional limits. Application of *Knights* to suspicionless searches conducted for law enforcement purposes balances away protections afforded by the Fourth Amendment by vitiating the requirement that searches be based on some degree of individualized suspicion—a requirement that is waived only in a closely guarded category of case in which "the evidence obtained in the search is not intended to be used for law enforcement purposes." *Ferguson*, 532 U.S. 88 (Kennedy, J., concurring). The lower court's extension of *Knights* undermines the limited nature of constitutionally permissible suspicionless searches by permitting blanket searches of a broad class of citizens without requiring that the state demonstrate that a special need beyond law enforcement justifies the search and should, therefore, be reviewed.

## IV. THE LOWER COURT'S APPLICATION OF THE *KNIGHTS* ANALYSIS TO THE SUSPICIONLESS SEARCHES AUTHORIZED BY THE STATUTE CONTRADICTS THE INTENT OF THE FRAMERS OF THE FOURTH AMENDMENT.

In adopting the Fourth Amendment, "[t]he framers sought to ensure that the newly formed federal government could not employ the two devices used by the British Crown that they believed jeopardized the liberty of every citizen: the general warrant and the writ of assistance." Potter Stewart, *The Road To* Mapp v. Ohio *And Beyond: The Origins, Development and Future of the Exclusionary Rule in Search-And-Seizure Cases*, 83 COLUM. L. REV. 1365, 1369 (1983) (footnote omitted). *See also* 2 Joseph Story, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES § 1902 (5th ed. 1891) (noting that the introduction of the prohibition of unreasonable searches and seizures into the amendments "was doubtless occasioned by the strong sensibility excited, both in England and America, upon the subject of general warrants almost upon the eve of the American revolution"). By applying the *Knights* analysis to the suspicionless searches authorized by the Statute, the decision below allows the state to employ what amounts to a general warrant—a practice the Framers intended to prohibit by adoption of the Fourth Amendment.

### A. The Framers Intended To Protect Individuals From Suspicionless Searches Conducted Pursuant To General Warrants.

One of the most powerful law enforcement tools available to colonial authorities was the general warrant. Leonard W. Levy, ORIGINS OF THE BILL OF RIGHTS, 153-54 (1999). General warrants empowered their holder to conduct searches with only the barest assertion of suspicion or, indeed, no suspicion whatsoever. *See* Stewart, 83 COLUM. L. REV. at 1369 (indicating that general warrants "were issued without a showing of probable cause and often without even

suspicion of criminal wrongdoing"). Moreover, because "no particular individual was charged with violating the law, no name appeared on the warrants, which were valid for the duration of the life of the monarch under whose name they were issued." *Id.* Under the general warrants, "[p]robable cause in the modern sense did not exist; not even a reasonable basis for suspicion existed." Levy, at 154.

Despite their prevalence, the colonies bristled under the unbridled authority provided by general warrants. Indeed, many early state constitutions expressly prohibited their use. *See, e.g.*, Virginia Declaration of Rights of 1776, Art. X ("That general warrants, whereby any officer or messenger may . . . search suspected places without evidence of a fact committed . . . are grievous and oppressive and ought not to be granted."); Delaware Declaration of Rights of 1776, § 17 ("[A]ll general warrants to search suspected places . . . without naming or describing the place or any Person in special, are illegal . . . ."). Thus, "[w]hat the Framers of the Fourth Amendment most strongly opposed, with limited exceptions . . . , were general searches—that is, searches by general warrant, by writ of assistance, by broad statute, or by any other similar authority." *Vernonia School Dist. 47J v. Acton*, 515 U.S. 646, 669 (1995) (O'Connor, J., dissenting).

### B. The Statute Authorizes Suspicionless Searches Similar To Those Authorized By General Warrants.

The Statute has many of the characteristics of the type of general warrants that the colonists inveighed against and the Framers sought to prohibit. Searches conducted pursuant to the Statute are conducted without probable cause or individualized suspicion, are directed at a broad category of persons, and because DNA samples obtained during the initial search are searched each time law enforcement officials review the database, are perpetual. *See* Stewart, 83 COLUM. L. REV. at 1369 (outlining characteristics of general warrants). Without the showing of a special need beyond

law enforcement to justify the suspicionless searches at issue in this case, the Statute is little more than a stalking-horse for general warrants. Thus, lower court's extension of *Knights* to suspicionless searches contradicts the Framers' intent in adopting the Fourth Amendment.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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